Date : 6/2/2023 10:44:13 PM
From : "T Kost"
To : "Paul Dulberg" , "Alphonse Talarico"
Subject : Re: One approach to answering Baudin's Argument 1

THESE ARE 4 CASES CITED BY BAUDINS ON PAGE 9:

Board of Managers of 1120 Club Condominium Association v. 1120 Club, LLC, 2016 IL App (1st) 143849

Biesek v. Soo Line R.R. Co., 440 F.3d 410, 413
(7th Cir. 2006).

Cannon–Stokes v. Potter, 453 F.3d 446, 448 (7th Cir. 2006) (if estate, through trustee, abandons a cause of action, then creditors no longer have an interest, and claim reverts to debtor's hands

n re Enyedi, 371 B.R. 327, 333 (N.D. Ill. 2007

THESE ARE DIRECT QUOTES FROM THE 4 CASES ABOUT 'AUTOMATIC STAY' AND 'STAY CALENDER':

In addition to creating a bankruptcy estate, the filing of a bankruptcy petition operates to stay all actions, whether judicial or private, that seek to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. See 11 U.S.C. § 362(a)(3).

the filing of a bankruptcy petition operates to stay all actions, whether judicial or private, that seek to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. See 11 U.S.C. § 362(a)(3).

It is well established in case law that acts taken in violation of the automatic stay imposed under section 362(a) of the Bankruptcy Code are deemed void ab initio and lack effect.

Hood v. Hall, 321 Ill.App.3d 452, 254 Ill.Dec. 470, 747 N.E.2d 510, 512 (2001) ("There is no question that judgments entered in violation of the automatic stay in bankruptcy are void ab initio . . . and that void judgments may be attacked at any time.")

Bankruptcy Code requires that acts in violation of the automatic stay be void, rather than voidable. Concluding that acts in violation of the automatic stay were merely voidable would have the effect of encouraging disrespect for the stay by increasing the possibility that violators of the automatic stay may profit from their disregard of the law, provided it goes undiscovered for a sufficient period of time.")

On May 11, 2011, the LLC filed a petition for Chapter 7 bankruptcy. Thereafter, the instant matter was placed on the stay calendar due to the bankruptcy.

THESE ARE DIRECT QUOTES FROM THE 4 CASES ABOUT 'STANDING':

Matter of New Era, 135 F.3d 1206, 1209 (7th Cir. 1998) ("When a debtor has a trustee in bankruptcy . . . the trustee has, with immaterial exceptions [citations omitted] the exclusive right to represent the debtor in court.")

once a bankruptcy action is instituted, all unliquidated lawsuits become part of the bankruptcy estate and only the bankruptcy trustee has standing to pursue them. Id. at 25-26. If, however, the bankruptcy trustee abandons or assigns property, then the property reverts back to the debtor in the same condition as if a bankruptcy trustee had never been appointed. Buller v. Buller, 9 Ill. App. 3d 125, 126-27 (1973); see also In re Dewsnup, 908 F.2d 588, 590 (10th Cir. 1990)

Although standing is typically determined from the allegations of the complaint on the date that suit is commenced (People ex rel. Lee v. Kenroy, Inc., 54 Ill. App. 3d 688, 692 (1977)), if a party to a lawsuit files for bankruptcy, that party is divested of standing to pursue the claim (see Dailey v. Smith, 292 Ill. App. 3d 22, 25 (1997)), even if suit has already been filed.

once a claim is assigned back to the debtor by the bankruptcy trustee, standing revests in the debtor, as if the debtor had never lost standing in the first place.

IMPORTANT SECTIONS OF 'BOARD OF MANAGERS':

paragraph 7: On May 11, 2011, the LLC filed a petition for Chapter 7 bankruptcy. Thereafter, the instant matter was placed on the stay calendar due to the bankruptcy.

paragraph 8: In June 2012, the Board filed a motion seeking to have the case removed from the stay calendar on the grounds that the bankruptcy court had modified the stay to allow the Board to pursue its claims against the LLC to the extent of the LLC's available insurance. The trial court granted the Board's motion and removed the matter from the bankruptcy calendar.

page 14: Although standing is typically determined from the allegations of the complaint on the date that suit is commenced (People ex rel. Lee v. Kenroy, Inc., 54 Ill. App. 3d 688, 692 (1977)), if a party to a lawsuit files for bankruptcy, that party is divested of standing to pursue the claim (see Dailey v. Smith, 292 Ill. App. 3d 22, 25 (1997)), even if suit has already been filed. This is because once a bankruptcy action is instituted, all unliquidated lawsuits become part of the bankruptcy estate and only the bankruptcy trustee has standing to pursue them. Id. at 25-26. If, however, the bankruptcy trustee abandons or assigns property, then the property reverts back to the debtor in the same condition as if a bankruptcy trustee had never been appointed. Buller v. Buller, 9 Ill. App. 3d 125, 126-27 (1973); see also In re Dewsnup, 908 F.2d 588, 590 (10th Cir. 1990) (abandoned property "reverts to the debtor and stands as if no bankruptcy petition was filed"); Mason v. Commissioner of Internal Revenue, 646 F.2d 1309, 1310 (9th Cir. 1980) ("When the court grants a trustee's petition to abandon property in a bankrupt's estate, any title that was vested in the trustee is extinguished, and the title reverts to the bankrupt, nunc pro

tunc.").

¶ 42 It is undisputed that the bankruptcy trustee did not assign the claim against Trapani to the LLC until after the LLC had filed its amended third-party complaint. In addressing the effect of that subsequent assignment, the trial court stated as follows:

"I think the case law—you can't come back and bring standing into play. You can't— you either have it at the time you file your suit or you don't. You can't come back and say, well, I have it now so, you know, we're all good. We can move forward. You didn't have it. It was a claim of the trustee. The trustee did not file it and therefore it's dismissed."

page 15: Although this conclusion might be correct in a case where standing is affected by something other than bankruptcy, it is not correct where standing was divested due to the filing of bankruptcy and the claim is later abandoned or assigned by the trustee. Rather, once a claim is assigned back to the debtor by the bankruptcy trustee, standing revests in the debtor, as if the debtor had never lost standing in the first place. See Hoth v. Stogsdill, 210 Ill. App. 3d 659, 667 (1991); see also Morlan v. Universal Guaranty Life Insurance Co., 298 F.3d 609, 617 (7th Cir. 2002) ("And actually, despite the attention we've been paying to getting the sequence [of the abandonment versus the filings in the underlying claim] right, the sequence doesn't matter; for 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.' " (quoting Wallace v. Lawrence Warehouse Co., 338 F.2d 392, 394 n.1 (9th Cir. 1964))).

page 15: In Hoth, the plaintiff brought an action for legal malpractice while her bankruptcy action was still pending. The defendants moved to dismiss her claim, arguing that the legal malpractice claim belonged to the bankruptcy estate and that unless and until the bankruptcy trustee abandoned the claim, the plaintiff lacked standing to pursue it. Hoth, 210 Ill. App. 3d at 661. The trial court agreed and dismissed the plaintiff's action with prejudice. After the trial court's dismissal, the bankruptcy court entered an order authorizing the bankruptcy trustee to assign to the plaintiff whatever interest the trustee had in the legal malpractice claim. Relying on this order, the plaintiff filed a motion to reconsider in the trial court. After the plaintiff filed her motion to reconsider but before the trial court ruled on it, the trustee formally assigned the legal malpractice claim to the plaintiff. Nevertheless, the trial court denied the plaintiff's motion to reconsider. Id. at 662.

¶ 44 On appeal, the appellate court reversed the trial court's dismissal of the plaintiff's claim. In doing so, the court observed that at the hearing on the plaintiff's motion to reconsider, the plaintiff presented to the trial court the bankruptcy court's order authorizing the assignment of the legal malpractice claim. According to the appellate court, that order made clear that the plaintiff then had standing to pursue the legal malpractice claim. Id. at 667. Therefore, the trial court should have granted the plaintiff's motion to reconsider and vacated its order dismissing the plaintiff's case. Id. at 668.

page 16: Trapani argues that because the LLC lacked standing at the time it filed its amended complaint, the amended complaint is a nullity and never legally in existence, i.e., void ab initio. In support of this proposition, Trapani relies on Bavel v. Cavaness, 12 Ill. App. 3d 633 (1973).

That case, however, did not involve a situation where the plaintiff lacked standing to file suit, but instead involved a suit filed against the estate of a deceased person, along with its executors and heirs. The court concluded that the suit was a nullity because the purported defendant—the estate—did not fall within the definition of a "party," i.e., a natural or artificial person who has the capacity to be sued. Id. at 637. In the present case, Trapani does not argue that the LLC does not qualify as a "party" or lacks the legal capacity to sue or be sued, but instead argues only that the LLC lacked standing to pursue the claims found in the amended third-party complaint. See generally Aurora Bank FSB v. Perry, 2015 IL App (3d) 130673, ¶ 17 (outlining the difference between standing and capacity to sue and be sued). As discussed above, even if the LLC lacked standing at the time it filed its amended third-party complaint, it regained standing through the bankruptcy trustee's assignment and, accordingly, the trial court should have denied the motion to dismiss.

page 18: We also conclude that the trial court erred in dismissing the LLC's amended third-party complaint, because the bankruptcy trustee's assignment of any claims against Trapani cured any lack of standing that might have resulted from the LLC's filing of bankruptcy.

IMPORTANT SECTIONS OF 'BIESEK':

This is a change of venue case and I do not see any relation to our case.

IMPORTANT SECTIONS OF 'Cannon-Stokes v. Potter':

page 1: holding that a plaintiff who had failed to list her claim on a bankruptcy schedule could not later pursue the claim and stating, "It is impossible to believe that such a sizeable claim--one central to her daily activities at work--could have been overlooked when [plaintiff] was filling in the bankruptcy schedules. And if [plaintiff] were really making an honest attempt to pay her debts, then as soon as she realized that it had been omitted, she would have filed amended schedules and moved to reopen the bankruptcy, so that the creditors could benefit from any recovery.

All six appellate courts that have considered this question hold that a debtor in bankruptcy who denies owning an asset, including a chose in action or other legal claim, cannot realize on that concealed asset after the bankruptcy ends. See Payless Wholesale Distributors, Inc. v. Alberto Culver (P.R.) Inc., 989 F.2d 570 (1st Cir. 1993); Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp., 337 F.3d 314 (3d Cir. 2003); Jethroe v. Omnova Solutions, Inc., 412 F.3d 598 (5th Cir. 2005); United States ex rel. Gebert v. Transport Administrative Services, 260 F.3d 909, 917-19 (8th Cir. 2001); Hamilton v. State Farm Fire Casualty Co., 270 F.3d 778 (9th Cir. 2001); Barger v. Cartersville, 348 F.3d 1289, 1293-97 (11th Cir. 2003).

A doctrine that induces debtors to be truthful in their bankruptcy filings will assist creditors in the long run (though it will do them no good in the particular case) — and it will assist most debtors too, for the few debtors who scam their creditors drive up interest rates and injure the more numerous honest borrowers. Judicial estoppel is designed to "prevent the perversion of the

judicial process," In re Cassidy, 892 F.2d 637, 641 (7th Cir. 1990), a fair description of the result if we were to let Cannon-Stokes conceal, for her personal benefit, an asset that by her reckoning is three times the value of the debts she had discharged. It is impossible to believe that such a sizeable claim — one central to her daily activities at work — could have been overlooked when Cannon-Stokes was filling in the bankruptcy schedules. And if Cannon-Stokes were really making an honest attempt to pay her debts, then as soon as she realized that it had been omitted, she would have filed amended schedules and moved to reopen the bankruptcy, so that the creditors could benefit from any recovery. Cannon-Stokes never did that; she wants every penny of the judgment for herself.

a debtor in bankruptcy is bound by her own representations, no matter why they were made, at least until the debtor moves to amend the disclosures and pay the creditors their due (a step that, to repeat, Cannon-Stokes has not taken). The remedy for bad legal advice lies in malpractice litigation against the offending lawyer.

she obtained the benefit of a discharge; she has never tried to make the creditors whole; now she wants to contradict herself in order to win a second case. Judicial estoppel blocks any attempt to realize on this claim for her personal benefit.

IMPORTANT SECTIONS OF 'Re Enyeti':

A hearing on the motion was held in bankruptcy court on July 10, 2007. While the Trustee, acting as his own attorney, and attorneys representing the Defendants were present, Attorney Spearman did not appear in court. Neither did Attorney Doyle appear on the Debtors' behalf; Debtor Nelson instead appear pro se before the court. Although evidence was not offered in the form of oral testimony or documentation, Defendants' attorneys maintained that they were not aware that the bankruptcy case had been re-opened and had they known, they would not have proceeded on their motion to dismiss. This court signed an order on July 10, 2007 ordering that (1) the state court order entered June 20, 2007 in Enyedi v. A-American Contractors Suppliers, Inc., et al. (Law Division, Case No. 05 L 005008) was void ad initio and held for naught; (2) the Defendants are directed to immediately take all actions necessary to vacate the June 20, 2007 state court order of dismissal; and (3) that the hearing on the Trustee's request for damages, attorney's fees and costs based on Defendants' allegedly willful violation of the automatic would be held on July 12, 2007. See 06-bk-08771; Doc. 37. The Defendants were also granted the opportunity to file any pleadings they deem pertinent for the hearing on July 12, 2007. See id The Defendants filed a written response to the motion on July 11, 2007. See 06-bk-08771, Doc. 38. As stated during the hearing on July 10, 2007, this court's ruling on the issues is explained in this order.

Property of the Estate The Automatic Stay

Upon the commencement of a bankruptcy case under Title 11, an estate includes, in part, "all legal or equitable interests of the debtor in property." See 11 U.S.C. § 541(a). A cause of action held by a debtor on the petition date is "`property' of the debtor and hence of the debtor's estate in bankruptcy." In re Polis, 217 F.3d 899, 902 (7th Cir. 2000). See also Cannon-Stokes v. Potter,

453 F.3d 446, 448 (7th Cir. 2006) ("[T]he estate in bankruptcy, not the debtor, owns all pre-bankruptcy claims. . . ."); Cable v. Ivy Tech State College, 200 F.3d 467, 472-73 (7th Cir. 1999) ("The phrase `legal or equitable interests . . . in property' includes choses in action and other legal claims that could be prosecuted for benefit of the estate."). If a trustee is serving in a case, section 521(a)(4) of the Code requires debtors to surrender all property of the estate to the trustee. See 11 U.S.C. § 521(a)(4). Moreover, a trustee is required to "collect and reduce to money the property of the estate for which the trustee serves. . . ." See 11 U.S.C. § 704(a)(1). See also Matter of Perkins, 902 F.2d 1254, 1257 (7th Cir. 1990) ("The authority to collect the debtor's assets is vested exclusively in the trustee.") Once a chapter 7 bankruptcy petition has been filed, the trustee holds the exclusive right to pursue the debtor's pre-petition causes of actions. See Cable, 200 F.3d at 472 ("In liquidation proceedings, only the trustee has standing to prosecute or defend a claim belonging to the estate."); Matter of New Era, 135 F.3d 1206, 1209 (7th Cir. 1998) ("When a debtor has a trustee in bankruptcy . . . the trustee has, with immaterial exceptions [citations omitted] the exclusive right to represent the debtor in court."); Matter of Heath, 115 F.3d 521 (7th Cir. 1997) (same). See also Dailey v. Smith, 292 Ill.App.3d 22, 225 Ill.Dec. 1000, 684 N.E.2d 991, 994 (1997) ("Once a bankruptcy petition is filed, all claims belong to the estate, and the bankruptcy trustee alone has standing to pursue them."). A trustee's statutory right to exclusivity ceases once the property has been abandoned. See Cannon-Stokes, 453 F.3d at 448 (Noting that if the estate, through the trustee, abandons a cause of action, then the creditors no longer have an interest, and the claim reverts back into the debtor's hands); 11 U.S.C. § 554. But see Perkins, 902 F.2d at 1258 (Court notes three narrow circumstances when a trustee can be divested of this exclusive authority). Absent abandonment, a debtor cannot pursue a cause of action for his or her own benefit.

The Trustee argues that regardless of the fact that the Debtors obtained a discharge and their case was closed, the automatic stay remained in effect with respect to the Personal Injury Litigation because it was never abandoned and thus remained as property of the estate. The Trustee's argument is correct.

Section 554 of the Bankruptcy Code states that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). However absent a trustee taking this affirmative step, "any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor. . . ." See 11 U.S.C. § 554(c). Of the debtor's duties enumerated in section 521(a)(1) of the bankruptcy Code, it includes the duty to "file . . . a schedule of assets and liabilities" unless the court has order otherwise. See 11 U.S.C. § 521(1)(B)(I). An unscheduled asset is not abandoned by a trustee to a debtor when the case is closed. See Morlan, 298 F.3d at 618 (Court notes that abandonment is not possible under section 554(c) because the debtor did not list his pre-petition ERISA claim in accordance with section 521(1)). Moreover, section 554(d) provides that "[u]nless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate." See Morlan v. Universal Guar. Life Ins. Co., 298 F.3d 609, 618 (7th Cir. 2002). See also Parker v. Wendy's Int'l, Inc., 365 F.3d 1268, 1272 (11th Cir. 2004); In re Benefield, 102 B.R. 157, 159 (Bankr.E.D.Ark. 1989). Because the Personal Injury Litigation is pre-petition property of the Debtors that was never scheduled and

administered by the Trustee prior to the closing of Debtors' case, it remained property of the estate and never reverted back to the Debtors. See Parker, 365 F.3d at 1272 ("Failure to list an interest on a bankruptcy schedule leaves that interest in the bankruptcy estate.") Additionally, this court never issued an order dictating that the asset was abandoned. The Personal Injury Litigation was never abandoned by the Trustee and remains property of the estate that is protected by the automatic stay. See generally Havelock v. Taxel (In re Pace), 159 B.R. 890, 899-900 (9th Cir. BAP 1993): Lopez v. Specialty Restaurants Corporation (In re Lopez), 283 B.R. 22, 31-33 (9th Cir. BAP 2002) (BJ, Klein, concurring opinion)

A trustee's statutory right to exclusivity ceases once the property has been abandoned.

Noting that if the estate, through the trustee, abandons a cause of action, then the creditors no longer have an interest, and the claim reverts back into the debtor's hands

But see Perkins, 902 F.2d at 1258 (Court notes three narrow circumstances when a trustee can be divested of this exclusive authority)

Absent abandonment, a debtor cannot pursue a cause of action for his or her own benefit

11 U.S.C. § 521(a)(4):

(a) The debtor shall —

. . .

(4) if a trustee is serving in the case or an auditor serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title

In addition to creating a bankruptcy estate, the filing of a bankruptcy petition operates to stay all actions, whether judicial or private, that seek to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. See 11 U.S.C. § 362(a)(3). Unless relief from the automatic stay is granted earlier, section 362(c) outlines when it terminates:

(c) Except as provided in subsections

(d), (e), (f), and (h) of this section —

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of —

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied; 11 U.S.C. § 362(c)(1) (2).

It is well established in case law that acts taken in violation of the automatic stay imposed under section 362(a) of the Bankruptcy Code are deemed void ab initio and lack effect. See Middle Tenn. News Co., Inc. v. Charnel of Cincinnati, Inc., 250 F.3d 1077, 1082 (7th Cir. 2001) ("Actions taken in violation of an automatic stay ordinarily are void."); York Ctr. Park Dist. v. Krilich, 40 F.3d 205, 207 (7th Cir. 1994) (judgment issued against debtors without a modification of the automatic stay must be vacated); Matthews v. Rosene, 739 F.2d 249, 251 (7th Cir. 1984) (orders issued in violation of automatic stay provisions of Bankruptcy Code ordinarily are void); In re Benalcazar, 283 B.R. 514, (Bankr.N.D.Ill. 2002) (same); Garcia v. Phoenix Bond Indem. Co. (In re Garcia), 109 B.R. 335, 340 (N.D.Ill. 1989) ("[T]he fundamental importance of the automatic stay to the purposes sought to be accomplished by the Bankruptcy Code requires that acts in violation of the automatic stay be void, rather than voidable. Concluding that acts in violation of the automatic stay were merely voidable would have the effect of encouraging disrespect for the stay by increasing the possibility that violators of the automatic stay may profit from their disregard of the law, provided it goes undiscovered for a sufficient period of time."). See also Hood v. Hall, 321 Ill.App.3d 452, 254 Ill.Dec. 470, 747 N.E.2d 510, 512 (2001) ("There is no question that judgments entered in violation of the automatic stay in bankruptcy are void ab initio . . . and that void judgments may be attacked at any time."); Concrete Prod, Inc. v. Centex Homes, 308 Ill.App.3d 957, 242 Ill.Dec. 523, 721 N.E.2d 802, 804 (1999) ("[A]cts in violation of the section 362(a) automatic stay are void ab initio.")

The June 20, 2007 state court order dismissing the Personal Injury Litigation with prejudice is void ab initio. By statute, the Personal Injury Litigation is still property of the Debtors' bankruptcy estate and is subject to the protections afforded by the automatic stay. The Defendants' action violated section 362(a)(3) of the Bankruptcy Code.

On Fri, Jun 2, 2023 at 3:49 AM T Kost <tkost999@gmail.com> wrote:

What follows is one approach to answering Baudin's Argument 1 on page 8.

Baudin states on page 5: "On October 31, 2016, the Bankruptcy Court heard the BK Trustee's

motions and entered an order authorizing the Bankruptcy Trustee to retain the Baudin Defendants to represent Plaintiff's bankruptcy estate in pursuing the Personal Injury Claim and for giving the bankruptcy trustee the power to execute any documents necessary to enter into a binding mediation agreement relative to the Personal Injury Claim.b

11 U.S.C. § 327(a) states that: (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

The employment of professionals must be approved by the court. Court approval must be sought prior to the rendering of any services.

Olsen filed notice of motion to enter into ADR on October 4, 2016 (bk document 34-0).

The legal theory that Olsen gave to the BK judge on October 31, 2016 when asking to go into ADR appears most likely to be based on Baudin's recommendations which Dulberg refused to consent to.

How is it possible that Olsen chooses ADR as Baudins recommended it at least since filing the notice of motion to enter into ADR on October 4, 2016, and gave the same argument to the Judge on October 31, 2016 that Baudin gave to Dulberg in July, 2016? The Baudins did not have the court's leave to "render any service" until October 31,2016.

Olsen's legal theory is in this transcript:

09 And then, presumably, if the Court
10 grants that, the second one is to authorize the
11 estate to enter into -- I'm not sure what you call
12 it, but binding mediation. But there's a floor of
13 $50,000, and there's a ceiling of $300,000.
14 And I guess I've talked with his
15 attorney. He seems very enthusiastic about it.
16 There may be some issues about the debtor being a
17 good witness or not, I guess.
18 It had to do with a neighbor who asked
19 him to help him out with a chainsaw, and then I guess
20 the neighbor kind of cut off his arm, or almost cut
.• .,
21 off his arm right after that. There's some
22 bitterness involved, understandably, I guess.
But I don't do personal inju t ~ Work at
24 all, so I'm not sure how that all flows through to a
25 jury, but he didn't seem to want to go through a jury

1 process.
2 He liked this process, so ...

How did Olsen get the idea that Dulberg has some issue about being a good witness? Who told him that?

from where did the idea of placing a $300,000 limit come? Olsen is in agreement with it following whose advise? How did Olsen come to be in agreement with the $300,000 limit on October 4, 2016 or before if Baudin's couldn't act as special counsel for the estate until October 31, 2016?

MR. OLSEN: Well, I guess the
13 mediators don't know there's a floor and a ceiling.
14 I'm not sure where that comes from, but that's --
15 yeah.
16 And whatever number they come back at
17 is the number we're able to settle at, except if it's
18 a not guilty or a zero recovery, we get 50,000, but
19 to come back at 3 million, we're capped at 300,000.

MR. OLSEN: I don't want to
2 micromanage his case.
3
4
5
THE COURT: But that, too, sounds reasonable.
There's been no objection?
MR. OLSEN: Correct.
5
6 THE COURT: Very well. I will approve
7 -- authorize, if you will, for you to enter into the
8 binding mediation agreement, see where it takes you.

How did Olsen already (apparently before October 4, 2016) come to agree that this is the best course to fulfill his obligations as trustee? On whose advice if the Baudins was first granted the capacity to act as special counsel on October 31, 2016? Olsen must have reveived the ideas about ADR and made a final decision to enter into ADR at least 25 days before Baudins were legally allowed to act as counsel for the estate.

What was the source of these recommendations if not the Baudin's? Olsen claims it is what the Baudin's and Dulberg wanted.

In what capacity did the Baudin's give Olsen this information and Olsen act on it if they were not yet retained and therefore could not render any service until after the ADR order was

already approved by the judge?

Baudin states on page 5: "In its order, the Bankruptcy Court authorized the bankruptcy trustee to adopt the contingency contract previously entered into between Plaintiff and the Baudin Defendants. (Id.) The Bankruptcy Court also authorized the trustee to "execute such documents as are necessary to accomplish the matters set forth herein." (Id.) As for the latter set of relief, the bankruptcy court stated: "I will approve – authorize, if you will, for you [the BK Trustee] to enter into the binding mediation agreement, see where it takes you." (Transcript of BK hearing, pp. 2, 5, attached as Group Ex. 6A to Ex. A.)"

The Judge authorized binding mediation based on what the Trustee told the judge. The trustee informed the judge that "dulberg agreed..." and assured the judge "there are no objections". Dulberg never agreed. Either the Baudins lied to Olsen by informing him that Dulberg agreed or Olsen lied to the judge on his own without first being informed that Dulberg agreed by the Baudins. This is a question of fact.

The Baudin's even admit that Dulberg refused to consent to ADR, so they either lied to Olsen before they were legally able to perform any service about Dulberg consenting or Olsen invented this lie without any input from Baudins.

If Olsen lied about Dulberg's consent without any input from the Baudin's, then how is it possible that Olsen is recommending the same ADR process that the Baudin's have been recommending to Dulberg since at least July, 2016?

The Baudins admit that Dulberg never consented to ADR so somebody clearly lied about Dulberg's consent. The misrepresentation to the judge prior to his issuing an order is fact. The question is, who lied?

Baudin states on page 5: "The agreement also appears to bear Plaintiff's own signature."

Dulberg never consented and refused to sign the proposed contract. So how his signature appeared on any ADR agreement is a question of fact.

Baudin states on page 8: "But Plaintiff had no ability to recover anything from his Personal Injury Claim because he did not own it – the Bankruptcy Estate did."

Dulberg was also a beneficiary to the bankruptcy estate as his debts were paid in full and he recovers all property of the bankruptcy estate.

According to the U.S. Bankruptcy Code, Section 726 – Distribution of property of the estate

(quote)

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of—

(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

(B) the date on which the trustee commences final distribution under this section;

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if—

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

(end quote)

Dulberg, as the debtor, was a stakeholder in the bankruptcy estate. If the first 5 types of claimants listed in section 726 are paid in full, Dulberg becomes the sole claimant to any remaining money and therefore the sole stakeholder in what remains of the bankruptcy estate.

Randall Baudin II and Kelly Baudin and The Baudin Law Group were retained by the trustee to represent the bankruptcy estate and Dulberg was the sole stakeholder of all funds in the estate once the first 5 types of claimants listed in section 726 have been paid in full. Therefore Randall Baudin II, Kelly Baudin and The Baudin Law Group acting as legal counsel for the estate owed a duty of due care to Dulberg when acting in this capacity.

In "Handbook for Chapter 7 Trustees" published by the U.S. Government page 31 states: "The principal duty of the trustee is to collect and liquidate the property of the estate and to distribute the proceeds to creditors. A chapter 7 case must be administered to maximize and expedite dividends to creditors." Dulberg was a beneficiary of the estate.

In "Handbook for Chapter 7 Trustees" published by the U.S. Government page 31 states: "The principal duty of the trustee is to collect and liquidate the property of the estate and to distribute the proceeds to creditors. A chapter 7 case must be administered to maximize and expedite dividends to creditors. A trustee shall not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case. The trustee must be guided by this fundamental principle when acting as trustee."

In "Handbook for Chapter 7 Trustees" published by the U.S. Government page 31 states:

"B. STATUTORY AND GENERAL DUTIES
The specific statutory duties of a trustee are set forth in section 704(a). The trustee shall:

1. Collect and reduce to money the property of the estate and close the estate as expeditiously as is compatible with the best interests of parties in interest. 11 U.S.C. § 704(a)(1).

2. Be accountable for all property received. 11 U.S.C. § 704(a)(2)."

In "Handbook for Chapter 7 Trustees" published by the U.S. Government page 31 states: "The chapter 7 trustee is the representative of the estate. 11 U.S.C. § 323(a). The trustee is a fiduciary charged with protecting the interests of all estate beneficiaries – namely, all classes of creditors, including those holding secured, administrative, priority, and non-priority unsecured claims, as well as the debtor's interest in exemptions and in any possible surplus property. The duties enumerated under section 704 are specific, but not exhaustive.

Baudin states on page 8: "Once Plaintiff filed for bankruptcy protection, he lost standing to pursue any personal injury claims because, upon filing for bankruptcy, any such claims became part of the bankruptcy estate."

Once again, Dulberg was the only beneficiary of the estate once the creditors were paid and

the creditors were paid in full.

Baudin states on page 8: "The bankruptcy trustee had the sole power to pursue and control the claim, which he exercised"

But not any way they please. "A chapter 7 case must be administered to maximize and expedite dividends to creditors." Dulberg was the beneficiary with the single largest interest in the estate.

Baudin states on page 9: "Upon commencement of the case, a debtor's interests in property vest in the bankruptcy estate, and the debtor surrenders the right to control estate property because property of the estate falls under the exclusive jurisdiction of the bankruptcy court. See 28 U.S.C. § 1334(e). Because property of the estate in custodia legis by virtue of the bankruptcy filing, it is administered exclusively by a specifically designated fiduciary, a trustee. See, e.g., 11 U.S.C. §§ 323(a), 363, and 704."

"The principal duty of the trustee is to collect and liquidate the property of the estate and to distribute the proceeds to creditors. A chapter 7 case must be administered to maximize and expedite dividends to creditors." Dulberg was a beneficiary of the estate.

Baudin states on page 10: "Although Plaintiff need not have identified the Personal Injury Claim as among his personal property for the claim to have become part of the bankruptcy estate, he did in fact identify the claim on an Amended Schedule B. (See Ex. C.) "

There was no choice. Dulberg must identify the claim on schedule B.

Baudin states on page 10: "The Estate and Bankruptcy trustee never relinquished that ownership or power, but instead assumed control over the Personal Injury Lawsuit, including the decision whether to mediate and on what terms."

As the transcript record shows, the decision the trustee took appears to be what the Boudins (or some unknown party) told them some time before October 4, 2016 even though the Baudins were not authorized to act as special counsel until October 31, 2016. From all available information Oslen appears to be following Baudin's advice and was in possession of the ADR document on or before October 4, 2016 when he filed the notice to enter into ADR.

The trustee either intentionally misinformed the judge or was intentionally misinformed from the Baudins that Dulberg consented to the ADR. The Trustee did not sign the ADR agreement. Dulberg's signature appears on the document but Dulberg denies ever signing the document.

4 cases are cited on page 9. They are:

Wright, 79 Ill.App.3d at 990; Board of Managers of 1120 Club Condominium Association v. 1120 Club, LLC, 2016 IL App (1st) 143849

Biesek v. Soo Line R.R. Co., 440 F.3d 410, 413
(7th Cir. 2006).

Cannon–Stokes v. Potter, 453 F.3d 446, 448 (7th Cir. 2006) (if estate, through trustee, abandons a cause of action, then creditors no longer have an interest, and claim reverts to debtor's hands

n re Enyedi, 371 B.R. 327, 333 (N.D. Ill. 2007

I haven't looked at them in detail yet. It is probably possible to show that the cases are not related to the Dulberg case.