NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 17, 2019*
Decided September 18, 2019

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 18-1745

EDWARD F. NOVOTNY, III,
Plaintiff-Appellant,

v.

PLEXUS CORP., *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 13-cv-05881

Andrea R. Wood,
Judge.

ORDER

Edward Novotny sued Plexus Corporation for employment discrimination. During the litigation he also petitioned for chapter 7 bankruptcy, and his petition eventually was granted. But during summary-judgment proceedings in the discrimination case, it came to light that Novotny had not disclosed his discrimination claims to the bankruptcy judge. The district judge concluded that Novotny's omission

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

was intentional and entered summary judgment for Plexus on grounds that Novotny was judicially estopped from pursuing those undisclosed claims. We affirm.

Novotny worked for Plexus for four years before being fired. He then brought this suit against Plexus and one of its employees. The district judge granted the defendants' partial motion to dismiss Novotny's complaint but allowed him to proceed on his claims of age discrimination under the ADEA, 29 U.S.C. § 621 *et seq.*, and race discrimination under 42 U.S.C. § 1981—claims that he valued at more than $1.3 million.

Three years after filing this lawsuit, Novotny, with the help of counsel, petitioned for chapter 7 bankruptcy in the Northern District of Illinois. The petition required that he list all his assets, including any legal claims against third parties. Novotny disclosed a possible workers' compensation claim against another former employer, but he did not disclose his claims in his ongoing litigation against Plexus. The bankruptcy judge granted Novotny's petition, discharged his debts, and closed his case—all without Novotny ever having revealed this litigation.

During discovery, Novotny apparently concealed his bankruptcy history from Plexus. When asked in an interrogatory whether he had ever filed for bankruptcy, Novotny objected to the question, asserting that that information was privileged and not relevant to his lawsuit.

Once Plexus learned about the omission in Novotny's bankruptcy, it moved for summary judgment. Novotny lacked standing to sue, Plexus argued, because his discrimination claim should have been relinquished to the bankruptcy estate. Plexus argued alternatively that Novotny should be judicially estopped from recovering on the undisclosed claims and reaping the financial benefits of his concealment.

In response, Novotny moved to reopen his bankruptcy so that he could amend his disclosure of assets to add his discrimination claims from this lawsuit. The bankruptcy judge granted his request, and Novotny filed an amended Schedule A/B. The trustee for Novotny's bankruptcy estate eventually abandoned the added claims, and the bankruptcy judge closed the case again. Novotny then responded to Defendants' motion for summary judgment and informed the district judge of these developments.

Three months later Novotny attempted to reopen his bankruptcy a second time and convert it to a chapter 13 bankruptcy. He did not inform the district judge or Plexus of this attempt.

Meanwhile, the district judge entered summary judgment against Novotny. The judge concluded that Novotny did have standing to sue (because the trustee abandoned his claims, which then reverted to Novotny) but held that Novotny was judicially estopped from recovering on the undisclosed claims. She found that Novotny's omissions to the bankruptcy court were intentional and determined that he should not be permitted to personally benefit from adopting a position contrary to the one he took in his original petition. The judge added that Novotny's failure to convert his bankruptcy to the more creditor-friendly chapter 13 also supported the ruling.

A week later, the bankruptcy judge denied Novotny's conversion request.

On appeal from summary judgment, Novotny challenges the district judge's application of judicial estoppel. He contends that the district judge "failed to prove" that the omissions in his bankruptcy application were intentional; we understand him to argue that the record evidence does not support the district judge's finding.

The district judge did not abuse its discretion when it enforced judicial estoppel against Novotny. Where a plaintiff seeks to benefit from an intentional omission from an earlier bankruptcy proceeding, judicial estoppel is appropriate, so long as estoppel would not adversely affect a litigant's creditors. *See Metrou v. M.A. Mortenson Co.*, 781 F.3d 357, 360 (7th Cir. 2015). Here, the evidence supports the district judge's finding that Novotny's omission was intentional. First, Novotny was actively litigating this lawsuit at the time he filed for bankruptcy. Second, his petition listed a possible workers' compensation claim against a different employer—an acknowledgment that he understood the question and did not simply neglect to answer it. Third, when asked in an interrogatory whether he ever had filed for bankruptcy, Novotny dodged the question, saying that the information was privileged and "not pertaining to the case at hand." Finally, in response to Plexus's motion for summary judgment, Novotny said that he omitted his discrimination case from his petition because he "had no idea what his case was worth at the time of filing"—a demonstrably untrue statement, given his $1.3 million request for relief. "[J]udicial estoppel raises the cost of lying." *Cannon-Stokes v. Potter*, 453 F.3d 446, 448 (7th Cir. 2006).

Novotny further asserts that judicial estoppel should have been foreclosed by his attempt to convert his bankruptcy from chapter 7 to chapter 13. He cites a district court case, *Lujano v. Town of Cicero*, No. 07 C 4822, 2012 WL 4499326, at *13 (N.D. Ill. Sept. 28, 2012), for the proposition that judicial estoppel is often inappropriate where a debtor's chapter 13 petition has been granted and the debtor is pursuing claims on behalf of the bankruptcy estate. But Novotny's motion to convert his bankruptcy to chapter 13 was *not* granted. Moreover, Novotny did not inform the district judge of his attempt to convert his bankruptcy until after summary judgment already had been entered, and district courts decide motions for summary judgment based on the record before them. *See* FED. R. CIV. P. 56(c)(3).

Novotny also asks us to review the bankruptcy judge's decision to deny his request to convert his bankruptcy. But we cannot entertain this request because we do not have jurisdiction over his bankruptcy proceedings. In bankruptcy cases, we have jurisdiction only over appeals from final decisions of the district court. *See* 28 U.S.C. § 158(d)(1); *In Matter of Ferguson*, 834 F.3d 795, 798 (7th Cir. 2016). Novotny never appealed his bankruptcy case to the district court, and it is now too late for him to do so. *See* FED. R. BANKR. P. 8002(a)(1); *In re Sobczak-Slomczewski*, 826 F.3d 429, 432 (7th Cir. 2016).

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EDWARD NOVOTNY,	)	
	)	
Plaintiff,	)	
	)	No. 13-cv-05881
v.	)	
	)	Judge Andrea R. Wood
PLEXUS INC. AND LUIS AVINA,	)	
	)	
Defendants.	)	

ORDER

Defendants Plexus Inc. and Luis Avina's motion for summary judgment [138] is granted. The Clerk is directed to enter Judgment in favor of Defendants. All pending motions and hearing dates are stricken. Civil case terminated. See the accompanying Statement for details.

STATEMENT

I. Background Facts[1]

Defendant Plexus Inc. hired Plaintiff Edward Novotny in May 2007 as a technician at its Chicago-area facility located in Buffalo Grove, Illinois. (Defs.' 56.1 Stmt. ¶ 6, Dkt. No. 139.) In October 2011, Plexus terminated Novotny's employment. (*Id.* ¶ 7.) Afterwards, Novotny filed a charge claiming age and disability discrimination with the Equal Employment Opportunity Commission. (*Id.* ¶ 8.) The Equal Employment Opportunity Commission subsequently issued a right-to-sue letter. (*Id.* ¶ 9.) On August 16, 2013, Novotny filed an initial complaint in this Court against Plexus and Luis Avina, a Plexus Inc. employee. (*Id.* ¶¶ 3, 10.) During the course of the litigation, the parties have briefed three motions to dismiss and Novotny has filed three amended complaints. (*Id.* ¶¶ 10–13.) The Court granted Defendants' partial motion to dismiss the third amended complaint, such that the remaining claims in this case consist of Novotny's claim against Plexus for discriminatory termination under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.*, and his race discrimination claims pursuant to 42 U.S.C. § 1981 claims against Plexus and Avina. (*Id.* ¶ 24.)

[1] Novotny has not complied with Local Rule 56.1(b), which states that the party opposing summary judgment must file "a concise response to the movant's statement [of material facts] that shall contain . . . a response to each numbered paragraph in the moving party's statement, including, in the case of any disagreement, specific references to the affidavits, parts of the record, and other supporting materials relied upon." Novotny has not denied Plexus's statements at all. Therefore, Novotny is deemed to have admitted all facts in Plexus's statement of undisputed facts. *See* N.D. Ill. L.R. 56.1(b)(3)(C) ("All material facts set forth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party.").

On February 18, 2016, three years after filing his initial complaint in this case, Novotny filed a petition for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois. (*Id.* ¶ 14.) Throughout his bankruptcy proceedings, Novotny was represented by the law firm Geraci Law. (*Id.* ¶ 15.) In Schedule A/B of his bankruptcy petition, Novotny was required to list all of his assets. (*Id.* ¶ 16.) Notably, in paragraph 33 of Schedule A/B, Novotny was directed to list any "[c]laims against third parties, whether or not [he had] filed a lawsuit or made a demand of payment." (*Id.* ¶ 17.) Examples of such third-party claims, as noted in paragraph 33, include "[a]ccidents, employment disputes, insurance claims, or rights to sue." (*Id.*) In response to that question on the form, Novotny stated that he had "a potential workers compensation claim against former employer Briggs and Stratton." (*Id.*) In paragraph 34 of the same form, Novotny was directed to list "[o]ther contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights." (*Id.* ¶ 18.) In his response, Novotny stated that he had no other claims. (*Id.*)

On May 24, 2016, the bankruptcy court entered an order discharging Novotny's unsecured debts, and a couple of days later the court closed the case. (*Id.* ¶¶ 21, 22.) At no point prior to discharge did Novotny inform the bankruptcy court, the bankruptcy trustee, or his creditors of the existence of his claims against Defendants in this matter. (*Id.* ¶ 23.) And when asked in Defendants' first set of interrogatories during discovery whether he had ever filed for bankruptcy, Novotny stated that he "consider[ed] this privileged information and objects to this request as not pertaining to the case at hand." (Defs.' Reply, Hawley Decl., Ex. A at 13, Dkt. No. 159.)

II. Standing

In their summary judgment motion, Defendants argue that Novotny lacks prudential standing to pursue his claims in this case because he is not the real party in interest.

Initially, Defendants argued that Novotny lacked standing because the asserted claims belong to his Chapter 7 bankruptcy estate. In Chapter 7 bankruptcy, the "debtor surrenders his assets . . . to his bankruptcy estate for equitable distribution to his creditors. In exchange he receives discharge from his debts and a fresh start." *In re Veluchamy*, 879 F.3d 808, 816 (7th Cir. 2018). The filing of a petition for bankruptcy creates the estate, which includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). In other words, upon filing a petition for Chapter 7 bankruptcy, all of a debtor's property, including his legal claims, become the property of the bankruptcy estate. *See In re Polis*, 217 F.3d 899, 901 (7th Cir. 2000) ("Although a cause of action is perhaps not 'personal property' in the usual sense, the definition in the Bankruptcy Code of property belonging to the debtor's estate as including (with irrelevant exceptions) 'all legal or equitable interests of the debtor in property as of the commencement of the case,' 11 U.S.C. § 541(a)(1), has uniformly been interpreted to include causes of action."). Therefore, all of Novotny's causes of action that had accrued at the time he filed his Chapter 7 petition on February 18, 2016 became property of the bankruptcy estate, and only the bankruptcy trustee can prosecute those claims. *In re Enyedi*, 371 B.R. 327, 332 (Bankr. N.D. Ill. 2007). However, if a trustee abandons a cause of action, then standing reverts to the debtor and he can pursue a cause of action for his own benefit. *Cannon-Stokes v. Potter*, 453 F.3d 446, 448 (7th Cir. 2006) ("But if the estate (through the trustee) abandons the claim, then the creditors no longer have an interest, and with the claim in the debtor's hands the possibility of judicial estoppel comes to the fore.").

Shortly after Defendants filed their motion for summary judgment, Novotny filed a motion with the bankruptcy court seeking to reopen his Chapter 7 case so that he could amend his disclosure of assets to include this lawsuit. (Pl.'s Resp., Ex. A at 1, Dkt. No. 156.) The bankruptcy court reopened the case and authorized the appointment of a Chapter 7 trustee. (*Id.* at 2.) On November 2, 2017, the trustee for Novotny's bankruptcy estate filed a report with the bankruptcy court abandoning the claims in Novotny's amended petition. (*See* Defs.' Reply, Hawley Decl. ¶ 8, Dkt. No. 159.) Because the Chapter 7 trustee has abandoned the claims in this suit, standing reverted back to Novotny. Defendants nonetheless argue in their reply brief that summary judgment is proper because Novotny repeatedly admits he lacks standing in his response to the summary judgment motion. However, drawing all reasonable inferences in Novotny's favor and taking his *pro se* status into consideration, the Court will not construe his arguably inadvertent statements regarding the legal doctrine of standing as "admissions" worthy of a summary judgment ruling—particularly given that his claims are precluded anyway under the doctrine of judicial estoppel.

III. Judicial Estoppel

Defendants alternatively argue that even if Novotny has standing to pursue the claims against them, he still should be judicially estopped from recovering on undisclosed claims. Judicial estoppel is an equitable doctrine that "prevents a party from adopting a position in a legal proceeding contrary to a position successfully argued in an earlier legal proceeding." *Johnson v. ExxonMobil Corp.*, 426 F.3d 887, 891 (7th Cir. 2005). As the Seventh Circuit jas noted, "[p]lenty of authority supports the . . . conclusion that a debtor in bankruptcy who receives a discharge (and thus a personal financial benefit) by representing that he has no valuable choses in action cannot turn around after the bankruptcy ends and recover on a supposedly nonexistent claim." *Biesek v. Soo Line R. Co.*, 440 F.3d 410, 412 (7th Cir. 2006) (listing cases). Novotony filed for bankruptcy but did not inform the bankruptcy court, the Chapter 7 trustee, or his creditors of the claims he is asserting here. Consequently, Novotony obtained a discharge of debts based on inaccurate information.

Novotony admits that he failed to disclose his claims to the bankruptcy court, but argues that judicial estoppel should not apply because his failure to disclose was inadvertent. Indeed, other courts have held that a failure to disclose may be considered inadvertent if the debtor did not know about the undisclosed claims or had no motive for concealing the claims. *See, e.g.*, *Esparza v. Costco Wholesale Corp.*, No. 10-cv-05406, 2011 WL 6820022, at *5 (N.D. Ill. Dec. 28, 2011); *Viette v. Hosp. Staffing Inc.*, No. 12-cv-2327, 2013 WL 2450101, at *3 (N.D. Ill. June 5, 2013); *Smith v. Am. Gen. Life Ins. Co.*, 544 F. Supp. 2d 732, 735 (C.D. Ill. 2008).

With respect to Novotny's knowledge of the undisclosed claims, he filed this age discrimination lawsuit in 2013. Although three years passed between filing of the complaint against Defendants and his filing for bankruptcy, Novotny actively litigated his case during that time—he filed three amended complaints, contested three motions to dismiss, and actively engaged in discovery. Novotny's frequent and active litigation demonstrates that he did not forget about this case, and was fully aware of the claims, when he filed for bankruptcy. Indeed, Defendants presented credible evidence that Novotny took active steps to conceal the undisclosed claims. In Paragraph 33 of Schedule A/B, Novotny was required to list any claims against third parties. Novotny disclosed only a "potential workers compensation claim against former employer Briggs and Stratton." (Defs.' 56.1 Stmt. ¶ 17, Dkt. No. 139.) It does not make

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sense for Novotny to have inadvertently listed a "potential" workers compensation lawsuit but not list this case, which he actively litigated for three years prior to filling out the form. Novotny argues that he failed to disclose his claims against Defendants because they were "extremely remote and unlikely." (Pl.'s Resp. at 4, Dkt. No. 156.) But surely Novotony's active case against Defendants was more likely to result in a recovery than his "potential" workers compensation claim against Briggs and Stratton. And Novotny's assertion that he nonetheless considered recovery "remote and unlikely," is belied by his active litigation of this case over three years. Furthermore, Novotny was represented by counsel in this bankruptcy proceeding; thus this was not a situation in which an inexperienced *pro se* filer made an inadvertent mistake on his bankruptcy schedules.

As for Novotny's motive to conceal the claims, he stood to receive any and all of the proceeds from this case. Even after reopening his bankruptcy proceeding, only he stands to benefit from the successful resolution of his discrimination claims. Because the trustee has abandoned these claims, Novotny's creditors will receive nothing. Had Novotny converted his Chapter 7 bankruptcy into a Chapter 13 bankruptcy, thereby committing himself to paying off his debt and ensuring that his creditors would receive payment from this litigation, the Court might have deemed it equitable to deny judicial estoppel. *See Lujano v. Town of Cicero*, No. 07-cv-04822, 2012 WL 4499326, at *14 (N.D. Ill. Sept. 28, 2012) ("Applying judicial estoppel now would be inequitable since it would further deprive the creditors of a chance to recover on their claims because of Lujano's earlier nondisclosure."). But Novotny has not attempted to convert the bankruptcy to Chapter 13 so his creditors can benefit, and instead hopes to keep the entire judgment for himself. Consequently, not only did Novotny have a motive to conceal his claims during the bankruptcy proceedings, but his decision not to convert the bankruptcy case means no creditor will benefit from the continued litigation of this matter.

One final equitable consideration is that Novotny only reopened his bankruptcy case to amend the schedule ***after*** Defendants filed their summary judgment motion. As other courts have noted, failing to apply judicial estoppel in situations where the debtor discloses assets only after he is caught concealing them could create an "escape hatch" that "would only encourage debtors to conceal assets." *Viette*, 2013 WL 2450101, at *4. Judicial estoppel is an equitable doctrine designed "to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001). If Notovny is allowed to proceed with his case and receives a judgment in his favor, his deceit would allow him to reap the benefits of the judgment without having to pay his creditors. With the integrity of the judicial process in mind, this Court is unwilling to incentivize debtors such as Novotny to conceal their assets. Consequently, Defendants' motion for summary judgment is granted.

Dated: March 8, 2018

Andrea R. Wood
United States District Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

EDWARD NOVOTNY	)	Case No. 13-cv-05881
	)	
Plaintiff,	)	Hon. Andrea R. Wood
	)	
v.	)	
	)	Magistrate Judge M. David Weisman
PLEXUS, INC. AND LUIS AVINA,	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants Plexus, Inc. ("Plexus") and Luis Avina ("Avina") (collectively "Defendants") file this Motion For Summary Judgment against Plaintiff Edward Novotny ("Plaintiff" or "Novotny"). In support their Motion, Defendants state as follows:

1. Plaintiff has sued Defendants alleging age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ("ADEA") and race discrimination in violation of Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981").

2. Defendants have denied and continue to deny that Plaintiff's claims have any merit or that he is entitled to any relief whatsoever.

3. Defendants, however, are entitled to summary judgment because Plaintiff lacks standing to prosecute his claims, as his claims belong to his bankruptcy estate.

4. Further, Defendants are entitled to summary judgment because Plaintiff's claims are barred by the doctrine of judicial estoppel. This is because Plaintiff: (a) filed for bankruptcy; (b) failed to inform the Bankruptcy Court, the Trustee or his creditors of the claims he asserts in this case against Defendants; and (c) obtained a discharge of his debts based on the incomplete information he provided under oath to the Bankruptcy Court.

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WHEREFORE, and for the reasons set forth in the contemporaneously filed Local Rule 56.1 Statement of Facts and Memorandum in Support this Motion for Summary Judgment, Defendants ask the Court to enter summary judgment in their favor, dismiss Plaintiff's Corrected Second Amended Complaint with prejudice, and award Defendants any additional relief the Court deems appropriate.

DATED: July 25, 2017

Respectfully Submitted by:

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