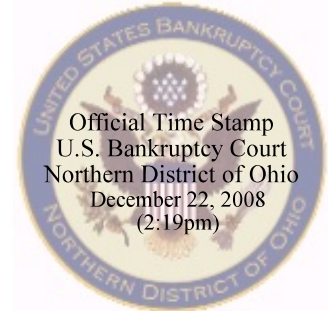


NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 05-96842  
 )  
LARRY D. JONES, ) Chapter 7  
 )  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
 )  
 ) **MEMORANDUM OF OPINION**<sup>1</sup>

The debtor Larry Jones filed this chapter 7 case on October 25, 2005. Sheldon Stein is the chapter 7 trustee.<sup>2</sup> On August 22, 2008, the trustee objected to claim no. 7 filed by Arthur Boyd, Jr., which Dr. Boyd opposed *pro se*. (Docket 76, 78). The matter was set for hearing on October 16, 2008, but was adjourned at Dr. Boyd's request to October 30, 2008. At the October 30, 2008 hearing, the court heard argument from the trustee's counsel and Dr. Boyd, and took the objection under submission.

After an initial review of the matter, the court, *sua sponte*, set a limited evidentiary hearing to address the issue of whether Dr. Boyd has standing to pursue this claim.<sup>3</sup> Trustee

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<sup>1</sup> This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

<sup>2</sup> The Larry Jones case was originally assigned to The Honorable Randolph Baxter. On March 13, 2008, the trustee moved to transfer the case to the undersigned on the ground that Arthur Boyd (who had a pending chapter 7 case before the undersigned) and Larry Jones are "related parties," as defined in Local Rule 1015-2(a)(5). On May 20, 2008, Judge Baxter granted the motion and transferred the case. (Docket 72).

<sup>3</sup> Docket 84.

Stein asked that the matter be decided without an evidentiary hearing<sup>4</sup> and Dr. Boyd asked that an evidentiary hearing be held on all issues related to his claim against the debtor.<sup>5</sup>

For the reasons stated below, (1) the trustee's motion to amend the order setting a limited evidentiary hearing is granted, with that order being vacated; (2) Dr. Boyd's motion for a full evidentiary hearing on all issues is denied; and (3) the trustee's objection to claim no. 7 is sustained because Dr. Boyd does not have standing to pursue the claim.

### **JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered in this district by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

### **DR. BOYD'S OWN BANKRUPTCY CASE, NO. 05-19361**

On June 28, 2005, an involuntary chapter 7 bankruptcy case was filed against Dr. Boyd by creditors, one of whom was Larry Jones. *In re Boyd*, case no. 05-19361, United States Bankruptcy Court for the Northern District of Ohio. After a hearing, this court entered relief against Dr. Boyd on August 4, 2005.<sup>6</sup> Mary Ann Rabin was appointed as the chapter 7 trustee.

On December 27, 2005, trustee Rabin filed a motion to compromise a dispute between Dr. Boyd and First Merit Bank that was pending in state court at the time the involuntary bankruptcy was filed. The state court lawsuit centered on claims by Dr. Boyd that First Merit, Larry Jones, and others committed fraud against Dr. Boyd in his efforts to get financing for a

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<sup>4</sup> Docket 87.

<sup>5</sup> Docket 86.

<sup>6</sup> Case no. 05-19361, docket 15.

nascent company called Star Beverage. Dr. Boyd, Edward Rhodes, and Don Sowers opposed the trustee's motion to compromise that lawsuit. After a hearing, the court granted the motion to enter into a compromise with First Merit Bank.<sup>7</sup> No one appealed from that order.

Trustee Rabin later moved in state court to dismiss the remaining claims in the state court lawsuit. On September 26, 2006, the state court granted the motion and dismissed the claim against Larry Jones with prejudice. Dr. Boyd's appeal from that order was denied.<sup>8</sup>

### **DR. BOYD'S CLAIM NO. 7**

Dr. Boyd filed a \$15 million priority claim against the debtor Larry Jones based on "fraud, theft, [and] embezzlement." He attached to his proof of claim a February 1, 2006 Customer Complaint Form to the Comptroller of the Currency, Administrator of National Banks, in which he stated that his "desired resolution" for the complaint is "\$15 million in compensatory damages from First Merit Bank or re-institution of the Bank Loan, and a line of credit. Clearance of UCC filings, etc. of Star Beverage, Arthur Boyd, Jr. from the judgment granted to Larry D. Jones for 1,413 million dollars and payment of legal and consultant fees and \$750,000 to Arthur B. Boyd Jr." Attached to that form is a document titled "Star Beverage Corporation-Valuation Issues-presented by MCP Advisors-November 2005-Confidential." Factually, this claim is the claim that Dr. Boyd raised in the state court lawsuit against Larry Jones, and others.

### **THE TRUSTEE'S OBJECTION**

Trustee Stein objects to Dr. Boyd's claim for these reasons:

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<sup>7</sup> Case no. 05-19361, docket 94, 95. The reader is referred to the memorandum of opinion for a discussion of the underlying facts and law at issue.

<sup>8</sup> Docket 106, 108.

1. Dr. Boyd's claim against Larry Jones relating to the Star Beverage/First Merit controversy is the property of Dr. Boyd's own bankruptcy estate and Dr. Boyd does not have standing to pursue it individually;

2. The claim is barred by res judicata or collateral estoppel;

3. It would be inequitable to permit Dr. Boyd to share in a distribution in this case; and, alternatively,

4. If the claim is allowed, there is no basis for giving it priority status.

Dr. Boyd responds:

1. He does not understand why Judge Baxter transferred this case to the undersigned more than two years after it was filed and he believes it is related to a coverup of criminal activity;

2. Larry Jones's bankruptcy filing was fraudulent;

3. Trustee Rabin abandoned this claim in Dr. Boyd's bankruptcy case by not administering it and he is, therefore, permitted to pursue the claim;

4. There is an issue with Barry Jones, the wife of Larry Jones, having co-signed documents relating to a Star Beverage transaction with First Merit Bank; and

5. He has a motion to reconsider pending before the Bankruptcy Appellate Panel of the Sixth Circuit Court of Appeals from a decision entered in his own bankruptcy case.

## **DISCUSSION**

### **I.**

A bankruptcy estate consists of all legal and equitable interests in property held by the debtor at the time the bankruptcy case is filed. 11 U.S.C. § 541(a). A lawsuit filed by the debtor

that is pending at the time of the bankruptcy filing is property of the estate. *Bauer v. Commerce Union Bank, Clarksville, Tennessee*, 859 F.2d 438, 441 (6th Cir. 1988) (stating that it is well settled that a trustee has the right to pursue causes of action formerly belonging to the debtor for the benefit of the estate). The chapter 7 trustee is the representative of the estate and has the capacity to sue. 11 U.S.C. § 323. The chapter 7 trustee is responsible for collecting and distributing property of the estate. 11 U.S.C. § 704. Generally speaking, a trustee either administers a scheduled asset or abandons it to the debtor. *See* 11 U.S.C. § 554.

\_\_\_\_\_ Dr. Boyd listed his state court lawsuit against Larry Jones in his schedule of assets. That lawsuit became property of his bankruptcy estate. Trustee Rabin administered the property by dismissing with prejudice the lawsuit against Jones; that is now a final order. Property that has been administered by the trustee is, by definition, not abandoned to the debtor. Dr. Boyd does not, therefore, have standing to pursue his claim against Larry Jones. Trustee Stein's objection to Dr. Boyd's claim is sustained for that reason.<sup>9</sup>

## II.

The facts on which the court bases this decision are not subject to dispute because, based on the filings and statements at oral argument, all parties agree that trustee Rabin dismissed the lawsuit against Larry Jones with prejudice, Dr. Boyd appealed that dismissal, and the state appellate court denied the appeal. There is, therefore, no need for an evidentiary hearing to resolve the dispute presently before the court.

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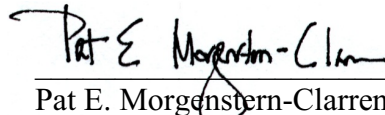
<sup>9</sup> The finding that Dr. Boyd does not have standing renders moot the other issues raised.

Dr. Boyd's motion for an evidentiary hearing seeks to rehear matters which were heard months, and in some cases years, ago. That motion is denied as untimely.

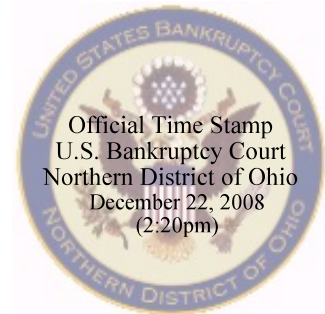
**CONCLUSION**

Trustee Stein's objection to Dr. Boyd's claim is sustained, Dr. Boyd's motion for an evidentiary hearing is denied, and the trustee's motion to alter or amend the order setting the limited evidentiary hearing is granted, with the court finding that such a hearing is no longer needed based on the supplemental filings and oral argument.

A separate order will be entered reflecting these decisions.

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

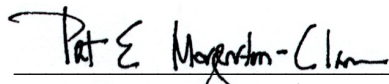
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Debtor. ) Judge Pat E. Morgenstern-Clarren  
 )  
 ) **ORDER**<sup>1</sup>

For the reasons stated in the memorandum of opinion entered this same date, the chapter 7 trustee's objection to the claim of Arthur Boyd, Jr. is sustained (docket 76). Dr. Boyd's motion for an evidentiary hearing is denied (docket 86), and the trustee's motion to alter or amend the order setting the limited evidentiary hearing on the issue of standing is granted (docket 87), with the court finding that such a hearing is no longer needed based on the supplemental filings and oral argument.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

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