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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0419-22**

HERTELOU JEAN,

Plaintiff-Appellant,

v.

SUPER SUPERMARKET,

Defendant-Respondent.

Submitted February 6, 2024 – Decided March 6, 2024

Before Judges Whipple and Paganelli.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Docket No. L-2172-20.

John J. Pisano, attorney for appellant.

Hickey, Smith, Dodd, LLP, attorneys for respondent
(Damian Montriece Sammons, on the brief).

PER CURIAM

Plaintiff appeals from the trial court's orders dismissing his complaint, and denying reconsideration of the order of dismissal, without prejudice. We vacate and remand.

We consider two preliminary issues. First, only final judgments may be appealed as of right. R. 2:2-3(a)(1). "To have the finality required to create appellate jurisdiction, an order must not only completely dispose of all pleaded claims as to all parties, but all its dispositions must also be final." Grow Co. v. Chokshi, 403 N.J. Super. 443, 460 (App. Div. 2008). A dismissal without prejudice does not create a final order. Ibid.; see also Caggiano v. Fontoura, 354 N.J. Super. 111, 123 (App. Div. 2002). If devoid of the required finality, an order is interlocutory and appellate review is available only by leave granted under Rules 2:2-4 and 2:5-6(a). Plaintiff did not seek leave to appeal, nor has defendant argued that the appeal is interlocutory. Therefore, for these purposes we consider the judge's order denying reconsideration a final order. See Chokshi, 403 N.J. Super. at 462 (noting that a "without prejudice" dismissal may operate as a final adjudication where it is imposed by the court, and where it is not a disposition negotiated by the parties in order to manufacture appellate jurisdiction).

Second, defendant's brief and appendix provide us with notice of bankruptcy filings and the bankruptcy judge's order denying plaintiff's application to have the bankruptcy re-opened. This information is from after the judge's denial of the motion for reconsideration and admittedly was not part of the record before the judge. "Appellate courts can consider a case only to the point at which it had been unfolded . . ." before the trial court. Scott v. Salerno, 297 N.J. Super 437, 447 (App. Div. 1997). Defendant requests we take judicial notice of the filings under N.J.R.E. 201 and 202(b). Plaintiff has not objected to defendant's submittal nor has plaintiff objected to our taking judicial notice. Since the information does not seem "to be the subject of any serious dispute," Teaneck Twp. v. Firemen's Mut. Benevolent Ass'n., 158 N.J. Super. 131, 133 (App. Div. 1978); and to the extent the information allows for our more complete review, we permit it.

I.

We glean the facts and procedural history from the motion record. On April 14, 2020, plaintiff filed a Chapter 13 voluntary petition for bankruptcy with the United States Bankruptcy Court for the District of New Jersey. The petition identified: (1) a then pending personal injury claim; (2) exemptions regarding the pending personal injury claim; (3) creditors; and (4) an unsecured

claim. The Chapter 13 plan provided plaintiff would make payments directly to the secured creditor for the full amount of the arrearage.

On July 8, 2020, plaintiff filed a complaint against defendant alleging that, two days prior, he was a customer of defendant's and was caused to slip and fall "due to the presence of a greasy liquid on the floor."

Plaintiff never supplemented the bankruptcy filing identifying the slip and fall cause of action. An order confirming the Chapter 13 plan was filed on August 31, 2020.

On September 25, 2020, defendant filed an answer to the complaint in this matter.

The bankruptcy case was completed on July 27, 2021, and a final decree was filed on December 16, 2021, noting the estate had been fully administered and the case was closed without discharge.

On July 20, 2022, Defendant filed a motion to dismiss plaintiff's complaint "for lack of standing and/or judicial estoppel."¹

¹ The notice of motion stated it was made pursuant to Rule 4:23-5(a). The Rule pertains to dismissals for "failure to make discovery." However, it is clear the notice of motion was merely mislabeled and was, in fact, a motion to dismiss plaintiff's complaint for lack of standing or judicial estoppel. Defendant withdrew the claim of judicial estoppel at oral argument of the initial motion to dismiss.

In an oral decision, the judge determined dismissal was necessary because the cause of action, brought after filing of bankruptcy, "would have been property of the bankruptcy estate." Therefore, plaintiff "lacked personal standing to pursue this complaint . . . [because i]t should have been brought on behalf of the bankruptcy estate or with permission of the trustee in the bankruptcy court." The judge noted that plaintiff "could have gone back and amend[ed]" the bankruptcy but failed to do so. Therefore, the judge reasoned, since the "claim belong[ed] to the bankruptcy estate [plaintiff] need[ed] an order from the bankruptcy court or the trustee allowing it to proceed." The judge dismissed the complaint, without prejudice, recognizing plaintiff may go "back and amend [in] the bankruptcy court," and he did not want to "divest the bankruptcy estate of its ability to bring" the cause of action.

Plaintiff filed a motion for reconsideration of the judge's dismissal order. In support of the motion, plaintiff provided the court with its amended bankruptcy filing, made five days after the court's order of dismissal, that included notice of this claim. In his oral decision, the judge found plaintiff had "not met the standard required for a successful motion for reconsideration." Noting "someone with standing might be able to file" a new complaint, the judge executed the September 9, 2022 order dismissing the complaint without

prejudice. It appears, on the same day, plaintiff filed a motion with the bankruptcy court to reopen the bankruptcy matter.

On October 7, 2022, plaintiff filed a notice of appeal in this matter. It also appears on October 6 and 7, defendant filed opposition to plaintiff's motion to re-open the bankruptcy matter. Ultimately, the bankruptcy judge executed an October 13, 2022 order denying the motion to reopen the case without stating reasons.

II.

Plaintiff argues:

THE ORDERS DISMISSING THE COMPLAINT AND DENYING THE MOTION FOR RECONSIDERATION SHOULD BE DENIED BECAUSE THE PLAINTIFF HAS STANDING TO PURSUE THIS PERSONAL INJURY ACTION THAT ACCRUED MONTHS AFTER HIS CHAPTER 13 BANKRUPTCY FILING.

More specifically, plaintiff contends: (1) he "retain[ed] standing to pursue legal claims in his own name on behalf of the estate with or without [c]ourt approval"; (2) he did not fail to disclose this cause of action in bankruptcy because the cause did not accrue until after the bankruptcy filing; (3) "there is no statutory or procedural rule requiring a debtor to file a supplemental or amended schedule for a post-petition personal injury claim"; and (4) the

creditors were paid in full, therefore, any funds derived from this cause of action are not needed for the bankruptcy estate.

In opposition, defendant argues: (1) debtors have an affirmative ongoing duty to disclose all lawsuits; (2) the obligation to disclose continues until the bankruptcy is closed; (3) plaintiff could have commenced a proceeding on behalf of the estate but only after disclosure; (4) New Jersey bankruptcy courts require disclosure of post-petition causes of action; and (5) plaintiff's attempt to amend the bankruptcy schedules was a "nullity" because amendments are not allowed after the bankruptcy is closed and the Bankruptcy Court denied plaintiff's motion to open the bankruptcy claim.

III.

"Whether a party has standing to pursue a claim is a question of law subject to de novo review." Cherokee LCP Land, LLC v. City of Linden Planning Bd., 234 N.J. 403, 414 (2018). "We therefore accord no 'special deference' to the 'trial court's interpretation of the law and the legal consequences that flow from established facts.'" Id. at 414-15 (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"Standing is . . . a threshold issue. It neither depends on nor determines the merits of a plaintiff's claim." Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 417 (1991). Instead, standing "involves a threshold determination of the court's power to hear the case." Id. at 418. "A dismissal for lack of standing . . . amounts to a refusal by the court to resolve the matter." Ibid.

Defendant espouses a narrow or strict view of standing. Defendant relies on Thomas v. Ind. Oxygen Co., 32 F. Supp. 3d 983, 988 (S.D. Ind. 2014) for the proposition that:

[t]he Bankruptcy Code requires the debtor to schedule as assets "all legal or equitable interests of the debtor in property as of the commencement of the [Chapter 13 bankruptcy] case." 11 U.S.C. § 541(a)(1). Any legal claims procured while the bankruptcy is pending also become property of the bankruptcy estate. 11 U.S.C. § 1306(a)(1) ("Property of the [Chapter 13 bankruptcy] estate includes . . . all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted . . .").

[Thomas, 32 F. Supp. 3d at 987 (alterations in original).]

Moreover,

[b]ecause a Chapter 13 debtor retains possession of the bankruptcy estate's property and "has concurrent standing with the bankruptcy trustee to pursue claims on behalf of the estate," [a debtor] is permitted to proceed . . . on behalf of the bankruptcy estate. . . . As long as

the bankruptcy proceeding is pending, [the debtor] as a Chapter 13 debtor[,] can inform the trustee of previously undisclosed legal claims, and unless the trustee elects to abandon that property, [the debtor] may litigate the claims on behalf of the estate and for the benefit of the creditors without court approval.

[Id. at 987-88 (fourth alteration in original) (quotations omitted).]

The court in Thomas explained the debtor there "acquired standing to pursue the claims on behalf of the bankruptcy estate when he disclosed the claims in the bankruptcy proceeding." Thomas, 32 F. Supp. 3d at 987 n.4. "Had he remained silent regarding the claims, he would not have had standing to pursue those claims on his own behalf because they belonged to the bankruptcy estate." Ibid. "Absent disclosure, he also would not have had standing to pursue them on behalf of the bankruptcy estate." Ibid.

Therefore, defendant contends, since plaintiff never disclosed this cause of action to the trustee, plaintiff lacks standing to pursue his claim.

However, New Jersey "courts have traditionally taken a [more] generous view of standing" In re N.J. State Contract A71188, 422 N.J. Super. 275, 289 (App. Div. 2011) (citing Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 58 N.J. 98, 107-12 (1971)). "[W]e have appropriately confined litigation to those situations where the litigant's concern with the subject matter

evidenced a sufficient stake and real adverseness." Crescent, 58 N.J. at 107. "A substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision is needed for the purposes of standing." In re Adoption of Baby T., 160 N.J. 332, 340 (1999). "A financial interest in the outcome ordinarily is sufficient to confer standing." EnviroFinance Grp. v. Env'tl. Barrier Co., 440 N.J. Super. 325, 340 (App. Div. 2015) (citation omitted).

Further, "[o]rdinarily, a litigant may not claim standing to assert the rights of a third party." Jersey Shore Med. Ctr.-Fitkin Hosp. v. Estate of Baum, 84 N.J. 137, 144 (1980). "However, standing to assert the rights of third parties is appropriate if the litigant can show sufficient personal stake and adverseness so that the [c]ourt is not asked to render an advisory opinion." Ibid.

We conclude, under New Jersey law, despite not notifying the bankruptcy trustee of this cause of action, plaintiff has standing to pursue the claim because he has an interest in obtaining redress and damages from an alleged tortfeasor. In other words, plaintiff has "a sufficient stake and real adverseness"; would be harmed by an unfavorable decision and has a financial interest. Moreover, to the extent the estate or creditors are third-parties, at least at the time of plaintiff's initial filing of the complaint, plaintiff had standing to pursue his rights because plaintiff had a personal stake and real adverseness in the matter.

Satisfied plaintiff has standing to maintain this cause of action, we vacate the orders of dismissal; reinstate plaintiff's complaint; and remand the matter for further proceedings. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION