

So Ordered.

Dated: September 30, 2021



Katherine M. Perhach
Katherine Maloney Perhach
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:
Cheryl Lynn Hobbs,
Debtor.

Chapter 7
Case No. 20-27572-kmp

**ORDER DENYING INA KASPER'S MOTION TO
DISQUALIFY DEBTOR-DEFENDANT'S ATTORNEY**

Creditor-Plaintiff Ina Kasper has moved to disqualify Debtor-Defendant Cheryl Hobbs' attorney, T. Michael Barrett, from representing Ms. Hobbs based on an alleged conflict of interest. Ms. Kasper seeks disqualification of Mr. Barrett in both Ms. Hobbs' Chapter 7 bankruptcy case and the adversary proceedings pending against Ms. Hobbs. For the reasons stated below, the Court denies the motion.

Ms. Kasper is a creditor of Ms. Hobbs. She filed a proof of claim in the amount of \$130,026.42 in Ms. Hobbs' Chapter 7 bankruptcy case. Claim No. 6-1. This claim is based on claims Ms. Kasper filed against Ms. Hobbs in state court, including "Fraud, Civil Theft, unjust enrichment, breach of contract and Conversion," and the amount includes treble damages. Claim No. 6-1. Ms. Hobbs removed this state court litigation to bankruptcy court. *See Kasper v. Hobbs*, Adv. No. 21-2007. She also objected to Ms. Kasper's proof of claim. *In re Hobbs*, No. 20-27572-kmp, Docket No. 38. Ms. Kasper filed an adversary complaint asserting that the debt

Ms. Hobbs owes to her is not dischargeable in this bankruptcy case. *Kasper v. Hobbs*, Adv. No. 21-2021. The Court consolidated the removed state court action with the action to determine dischargeability. *Kasper v. Hobbs*, Adv. No. 21-2007, Docket No. 17.

In Ms. Hobbs' Chapter 7 bankruptcy case, approximately \$42,000 is available for pro rata distribution to creditors, representing non-exempt inheritance received by Ms. Hobbs. The deadline to file proofs of claim in the Chapter 7 bankruptcy case has passed. Ms. Kasper's \$130,026.42 claim is the largest claim on file. The second largest claim was filed by T. Michael Barrett, Ms. Hobbs' attorney, in the amount of \$20,101.23 for legal fees he incurred representing Ms. Hobbs in Ms. Kasper's state court case before Ms. Hobbs filed her bankruptcy case. Nine other creditors have filed proofs of claims in comparatively small dollar amounts. These claims total \$5,568.22.

In essence, Ms. Kasper takes issue with the fact that Mr. Barrett is her competitor when it comes to the funds available for distribution to creditors in this case, arguing in part the Court should disqualify Mr. Barrett "as a matter of judicial policy." She complains that she "will be financially injured if Attorney Barrett is allowed to continue representation of the Debtor-Defendant and maintain his status as a creditor" because she "may be subject to a lower distribution from the Trustee." It is worth noting that even if this Court were to agree with Ms. Kasper that Mr. Barrett should be prohibited from representing Ms. Hobbs, the proof of claim he filed in this case is still "prima facie evidence of the validity and amount of [his] claim." Fed. R. Bankr. P. 3001. The Chapter 7 Trustee has not objected to his proof of claim, and disqualifying Mr. Barrett as counsel for Ms. Hobbs would not result in disallowance of the claim he has filed in her bankruptcy case.

Ms. Kasper makes two other arguments in favor of disqualification of Mr. Barrett, both of which are easily dismissed. Ms. Kasper argues that under 11 U.S.C. § 327(a), debtors' attorneys must not "hold or represent an interest adverse to the estate" and must be "disinterested persons" as defined by § 101(14). Section 327 of the Bankruptcy Code does not apply to an attorney representing a Chapter 7 debtor like Ms. Hobbs. *See, e.g., In re Mack Indus., Ltd*, 606 B.R. 313, 319 n.3 (Bankr. N.D. Ill. 2019) ("Chapter 7 debtors' counsel are not approved by the court and are not paid from property of the estate."). It applies when the "trustee" seeks to employ "attorneys, accountants, appraisers, auctioneers, or other professional persons." The "trustee" in this case is the Chapter 7 Trustee, who has not sought to employ Mr. Barrett. Unlike in cases filed under Chapter 11, 12, or 13, a Chapter 7 debtor does not have a subset of the rights, functions, and duties of a trustee. *Compare* 11 U.S.C. §§ 1107, 1203, 1303. (In her briefing in support of her motion, Ms. Kasper cites several provisions of Chapter 11 of Title 11. These do not apply in a case under Chapter 7. 11 U.S.C. § 103(g).) Thus, any argument that Mr. Barrett would not qualify to represent "a trustee" under § 327(a) is unavailing.

Ms. Kasper also argues that Mr. Barrett's representation of Ms. Hobbs presents a nonwaivable conflict of interest under the Wisconsin Rules of Professional Conduct for Attorneys. Local Rule 9029(f) provides that "[a]ttorneys practicing before this court are subject to the Wisconsin Rules of Professional Conduct for Attorneys, as such may be adopted from time to time by the Wisconsin Supreme Court and except as may be modified by this court" and any attorney who violates those standards of conduct may be subject to discipline the Court deems proper.

SCR 20:1.7, Conflicts of interest current clients, provides that:

(a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under par. (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in a writing signed by the client.

Ms. Kasper argues that Mr. Barrett has a concurrent conflict of interest because there is a significant risk that his representation of Ms. Hobbs will be materially limited by a personal interest of his, namely, realization of as much of his claim in her Chapter 7 case as possible. Ms. Kasper argues that the representation does not satisfy SCR 20:1.7(b) and is not waivable.

Without passing judgment on whether Mr. Barrett might have a concurrent conflict of interest, the Court determines that Ms. Kasper has failed to show that Ms. Hobbs could not waive such a conflict under SCR 20:1.7(b). Mr. Barrett observes that he has co-counsel, in part supporting a reasonable belief that he can provide competent and diligent representation to Ms. Hobbs. *See* SCR 20:1.7(b)(1). The representation does not involve the claim of one of Mr. Barrett's clients against another. *See* SCR 20:1.7(b)(3). Finally, Mr. Barrett has represented as an officer of the Court that he has obtained Ms. Hobbs' written, informed consent as required by SCR 20:1.7(b)(4). The Court declines to disturb Ms. Hobbs' choice of counsel in these matters.

The only remaining question is whether the representation is prohibited by law. *See* SCR 20:1.7(b)(2). Ms. Kasper first asserts that it is prohibited by 11 U.S.C. § 327(a). As the Court has already established, this provision of the Bankruptcy Code does not apply to Ms. Hobbs as a Chapter 7 debtor hiring counsel. Ms. Kasper then asserts that the representation is prohibited by 11 U.S.C. § 523(a). Reply Brief at p. 5. She makes no argument in support of this assertion, nor can the Court discern how § 523(a) might prohibit a lawyer's representation. That section of the Bankruptcy Code lists the debts that are nondischargeable in bankruptcy cases.

Ms. Kasper has not given the Court any basis to disqualify Mr. Barrett from representing Ms. Hobbs in her Chapter 7 bankruptcy case or either of the pending adversary proceedings.

Accordingly,

IT IS THEREFORE ORDERED: the Motion to Disqualify Debtor-Defendant's Attorney is denied.

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