

Dated October 07, 2003



James F. Schneider
JAMES F. SCHNEIDER
U. S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

In re: *

INNER CITY MANAGEMENT, INC., *

Case No. 00-6-0731-JS

Debtor *

(Chapter 7)

* * * * *

In re: *

MICHAEL BOGDAN, *

Case No. 00-6-0732-JS

Debtor *

(Chapter 7)

* * * * *

SEAN C. LOGAN, *

Chapter 7 Trustee, *

Plaintiff *

*

Adv. Pro. No. 02-5681-JS

IRVIN L. BECKER, JR., *

Defendant *

* * * * *

SEAN C. LOGAN, *
Chapter 7 Trustee, *
Plaintiff *

v. * Adv. Pro. No. 03-5069-JS

GILBERT KRAMER, Etal., *
Defendants *

* * * * *

SEAN C. LOGAN, *
Chapter 7 Trustee, *
Plaintiff *

v. * Adv. Pro. No. 03-5070-JS

JOHN VOYATZIS, Etal., *
Defendants *

* * * * *

SEAN C. LOGAN, *
Chapter 7 Trustee, *
Plaintiff *

v. * Adv. Pro. No. 03-5071-JS

NORMAN C. ANDERSON, Etal. *
Defendants *

* * * * *

SEAN C. LOGAN, *
Chapter 7 Trustee, *
Plaintiff *

v. *

Adv. Pro. No. 03-5072-JS

NICHOLAS PISTOLAS, Etal. *
Defendants *

* * * * *

***MEMORANDUM OPINION GRANTING DEFENDANTS’
MOTIONS TO DISMISS AMENDED COMPLAINTS***

These consolidated adversary proceedings are before this Court upon various motions to dismiss. The issue presented by the motions is whether the Chapter 7 trustee has standing to assert a fraud claim on behalf of the bankruptcy estate against third parties with whom the debtor was engaged in wrongdoing. For the reasons stated, the motions to dismiss will be granted.

FINDINGS OF FACT

On August 25, 2000, the debtors, Michael Bogdan (“Bogdan”) and Inner City Management (“Inner City”) filed voluntary Chapter 7 bankruptcy petitions in this Court. Sean C. Logan was appointed Chapter 7 trustee. On June 25, 2002, the trustee filed a ten-count complaint against 46 defendants, including Fidelity National Title Insurance Company, JKV Real Estate Services, John K. Voyatzis, Statewide Title

Company, American Title Insurance Company, Gilbert Kramer, First American Title Insurance, Reliance Insurance Co., Stewart Title Guaranty Co., Nicholas Pistolas, All County Title, Security Title Guarantee, and American Security Mortgage alleging breach of contract, fraud, civil conspiracy, and negligence. The defendants filed motions to dismiss on grounds, *inter alia*, that the trustee failed to plead fraud with particularity as to each named defendant and that the trustee lacked standing to pursue a claim on behalf of creditors of the estate.

At a hearing on November 19, 2002, this Court granted the motions to dismiss on the ground that the trustee could not join all of the defendants in one complaint based upon separate causes of action arising out of different facts. In so doing, the Court also held that the plaintiff had failed to allege fraud against each defendant with sufficient particularity. On November 25, 2002, this Court entered an order that dismissed the complaint with leave to file separate complaints against the various defendants within 60 days. Accordingly, on January 17, 2003, the trustee filed the instant complaints.

The five complaints alleged that Bogdan was sole shareholder and alter ego of Inner City. Beginning in 1997, Bogdan conspired with the defendants in an illegal “flipping scheme,” obtaining loans to purchase real property in the city of Baltimore by submitting false and fraudulent documentation as part of their loan applications and

selling the properties at inflated prices based upon false appraisals. These appraisals were used by the defendant mortgage brokers to justify the issuance of mortgages for amounts greatly in excess of the value of the properties. Settlement agents disbursed loan proceeds that allowed buyers to receive substantial kickbacks from the proceeds of the mortgage loan. This fraudulent and illegal conspiracy continued until Bogdan was charged in Federal district court with conspiracy to commit mail and wire fraud and with making false statements in violation of 18 U.S.C. § 371. On December 19, 2000, he entered a guilty plea to the charges.

CONCLUSIONS OF LAW

STANDARD OF REVIEW

Fed. R. Civ. P. 12(b)(6), made applicable to these bankruptcy proceedings by Fed. R. Bankr. P. 7012(b), provides:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion. . .

(6) failure to state a claim upon which relief can be granted.

Id.

The standard applicable to a motion to dismiss is well established. When ruling on a Rule 12(b)(6) motion, the court accepts as true all well-pleaded allegations in the complaint, including all reasonable inferences that may be drawn from them, in the light most favorable to the plaintiff. *Hemelt v. Pontier (In re Pontier)*, 165 B.R. 797, 798-99 (Bankr. D. Md. 1994). “[A] complaint should not be dismissed merely because the court doubts that the plaintiff will ultimately prevail; so long as a plaintiff colorably states facts which, if proven, would entitle him to relief, the motion to dismiss should not be granted.” *Advanced Health-Care Services, Inc. v. Radford Community Hospital*, 910 F.2d 139, 145 n.8 (4th Cir. 1990); *Adams v. Bain*, 697 F.2d 1213, 1216 (4th Cir. 1982).

CONSTITUTIONAL REQUIREMENTS OF STANDING

Article III of the Constitution confers upon the federal courts the judicial power to adjudicate cases or controversies. U.S. Const. art. III, § 2, cl. 1; *Allen v. Wright*, 468 U.S. 737, 750, 104 S. Ct. 3315, 3324, 82 L. Ed. 2d 556 (1984); *In re A.R. Baron & Co.*, 280 B.R. 794, 799 (Bankr. S.D.N.Y. 2002). The Article III doctrine requires that a litigant have standing to invoke the power of a Federal court. *Allen*, 468 U.S. at 740, 104 S.Ct. at 3324, 83 L.Ed 2d 556; *In re Hirsh*, 72 F.3d 1085, 1091(2d Cir. 1995). In order to have standing, “[a] party must ‘assert his own legal rights and interest, and cannot rest his claim to relief on the legal rights or interest of third

parties.”” *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 118 (2d Cir. 1991) (*quoting Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 45 L. Ed. 2d 343 (1975)). Unless the party has a “personal stake in the outcome of the controversy, the action does not meet the case or controversy requirement of the constitution.” *Warth*, 422 U.S. at 498-99, 95 S. Ct. at 2205, 45 L. Ed. 2d 343 (*quoting Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691, 703, 7 L. Ed. 2d 663 (1962)). Accordingly, a plaintiff must “[1] allege personal injury [2] fairly traceable to the defendant’s allegedly unlawful conduct and [3] likely to be redressed by the requested relief.” *In re Hirsh*, 72 F.3d at 1090 (*quoting Allen*, 468 U.S. at 751, 104 S.Ct. at 3324, 82 L.Ed. 2d 556))(internal citations omitted).

THE TRUSTEE’S LACK OF STANDING

“The trustee succeeds to the property of the debtor’s estate,” *Drabkin v. L & L Constr. Assoc., Inc. (In re Latin Investment Corp.)*, 168 B.R. 1, 4 (Bankr. D.D.C. 1993, “[which] includes all causes of action the debtor could have brought outside bankruptcy.” *Id.* Thus, the bankruptcy trustee lacks standing to sue on behalf of the bankruptcy estate against nondebtor third parties unless the claims being sued on were those of the debtor. *Tese-Milner v. Beeler (In re Hampton Hotel Investors, L.P.)*, 289 B.R. 563, 574 (Bankr. S.D.N.Y. 2003).

To have standing to pursue a claim against nondebtor third parties, the trustee must allege that the debtor was harmed in a manner that is distinct from the harm suffered by the estate's creditors. "[W]hen creditors have. . . a claim for injury that is particularized as to them, they are exclusively entitled to pursue that claim, and the bankruptcy trustee is precluded from doing so." *Hirsh*, 72 F.3d at 1093. "Where claims belong solely to the creditors and involve misconduct on the part of the debtor against creditors, *i.e.*, 'when a bankrupt corporation has joined with a third party in defrauding its creditors, the trustee cannot recover against the third party for the damage to the creditors.'" *Creditors Trust v. Bairnco Corp. (In re Lippe)*, 218 B.R. 294, 301 (S.D.N.Y. 1998), *quoting Wagoner*, 944 F.2d at 118.

The trustee also lacks standing under the doctrine of *in pari delicto*, according to which a debtor who was complicit in wrongdoing with third parties is precluded from pursuing a claim against a nondebtor third party. "[W]hen a [debtor] has joined with a third party in defrauding creditors, the trustee cannot recover against the third party for the damage to the creditors." *A.R. Baron*, 280 B.R. at 800; *Wagoner*, 944 F.2d at 118.

In the instant complaints for damages to creditors caused by the fraudulent conduct of the debtor and the entities under his control, the trustee lacks standing to sue the defendants for injuries they caused in concert with the debtor. The cause of

action belongs exclusively to the injured creditors of the bankruptcy estate and not to the debtor's estate, because absent the bankruptcy case, the debtor had no standing to sue the defendants. Because the instant suit is not premised upon injury to the estate, the trustee is not the proper plaintiff to bring suit. *National City Bank of Minneapolis v. Lapidés*, (*In re Transcolor*), 296 B.R. 343, 367 (Bankr. D. Md. 2003).

This result is not altered by the assignment to the trustee of specific claims against the debtors by various mortgage lenders and/or purchasers of mortgages who were injured by the debtors' fraudulent conduct. The trustee has no derivative standing to sue debtors based on the claims of individual creditors, whether by assignment or otherwise. To grant such standing not specifically authorized by the Bankruptcy Code would unlawfully expand the traditional powers of bankruptcy trustees and defeat the statutory scheme created by Congress.

This is a vastly different scenario from that presented in *Transcolor*, 296 B.R. 343, decided by this Court earlier this year. In *Transcolor*, the suit was brought by a creditor against a debtor and its alter ego for damages the plaintiff sustained by reason of the fraud of the debtor and the alter ego. While the trustee acknowledged the plaintiff's standing to sue, (and implicitly her own lack thereof), the plaintiff agreed to share any recovery of damages with the debtor's estate.

In the instant complaints, the trustee had no standing in the first place and did not acquire standing by his acceptance of the injured creditors' assignments of claims.

WHEREFORE, the motions to dismiss will be GRANTED, based upon the trustee's lack of standing to bring and maintain the instant complaints.

ORDER ACCORDINGLY.

cc: Lawrence J. Yumkas, Esquire
Douglas B. Riley, Esquire
Rosenberg, Prout, Funk & Greenberg, LLP
25 South Charles Street, Suite 2115
Baltimore, Maryland 21201
Counsel for the Trustee, Sean C. Logan

Sean C. Logan, Esquire
Chapter 7 Trustee
Maryland First Financial Services Corp.
821 North Charles Street
Baltimore, Maryland 21201

Stephen L. Prevas, Esquire
Prevas and Prevas
American Bldg., Ste. 703
231 E. Baltimore St.
Baltimore, Maryland 21202
Counsel for Gilbert Kramer and Statewide Title

Howard A. Rubenstein, Esquire
David B. Applefeld, Esquire
Counsel for Mortgage Services & Planning Southern Home Mortgage,
Mortgage Bank of America All County Title, LLC, JKV Real Estate Services
and Royal Land Title LLC

Charles E. Iliff, Jr., Esquire
Iliff & Meredith
Patriots Plaza, Suite 201-203
8055 Ritchie Highway
Pasadena, Maryland 21122
Counsel for Gilbert Kramer, Statewide Title Company, Inc.
and First American Title Insurance Co.

John A. Roberts, Esquire
Venable, Baetjer & Howard, LLP
Two Hopkins Plaza
Baltimore, Maryland 21201
Counsel for Nicholas J. Pistolas, Fidelity National Title Insurance Co. and
Security Title Guarantee Corporation of Baltimore

John Fischel, Esquire
Richard L. Costella, Esquire
Miles & Stockbridge
Counsel for Stewart Title and United General Title Company

Irving E. Walker, Esquire
Saul Ewing LLP
100 S. Charles Street, 15th Floor
Baltimore, Maryland 21201
Counsel for O'Connor, Piper & Flynn, ERA

Brian C. Parker, Esquire
Parker, Dumler & Kiely, LLP
36 South Street, Suite 2200
Baltimore, Maryland 21201
Counsel for Fidelity Title

Martin S. Himeles, Esquire
Karen Bell Eisenberg, Esquire
Zuckerman Spaeder LLP
100 East Pratt Street, Suite 2440
Baltimore, Maryland 21202
Counsel for Nicholas J. Pistolas and All County Title

Richard M. Kremen, Esquire
Jodie E. Buchman, Esquire
Piper Rudnick LLP
6225 Smith Avenue
Baltimore, MD 21209-3600
Counsel for Chicago Title Insurance Company, Stewart Title Guaranty
Company and First American Title Insurance Company

Robert L. Ferguson, Jr., Esquire
Ann D. Ware, Esquire
James E. Crossan, Esquire
Ferguson, Schetelich & Ballew, P.A.
100 South Charles Street
Suite 1401
Baltimore, Maryland 21201-2725
Counsel for John K. Voyatzis and JKV Realty

James C. Olson
10451 Mill Run Circle
Suite 400
Owings Mills, MD 21117
Counsel for Crystal Lynn Bogdan

Irvin L. Becker, Jr.
8174 N. Boundary Road
Baltimore, Maryland 21222

Bruce A. McCullough
5039 Wright Avenue
Baltimore, Maryland 21205

James Fioravante
6 Featherstone Court
Baltimore, Maryland 21236

James L. Stewart, Jr.
8325 Frostwood Drive

Laurel, Maryland 20724

Robert A. Gullace
Patricia A. Gullace
104 Greenwood Creek Road
Queenstown, Maryland 21658

Nicholas J. Pistolas, Esquire
608 Baltimore Avenue
Baltimore, Maryland 21204

Michael Bogdan
Crystal Lynn Bogdan
813 Pine Creek Way
Abingdon, Maryland 21009

Steven Jernigan
9481 Farewell Road
Columbia, Maryland 21045-4453

Brent Reed
2519 Holly Neck Road
Baltimore, Maryland 21221-2032

Raffaele Mazzone
200 Glenview Terrace
Abingdon, Maryland 21009

Shane Adamiak
1437 Huntfield Way
Jarrettsville, Maryland 21084-1950

Joanne Hogg
2810 Noirbeck Road
Silver Spring, Maryland 20906

Dale Schulz

13 Misty Meadow Court
Baltimore, Maryland 21221

John K. Voyatzis
8341 Cherry Lane
Laurel, Maryland 20707

Gilbert Kramer
1700 Reisterstown Road, Suite 236
Baltimore, Maryland 21208

David Daneman, Esquire
Bishop, Daneman, Reiff & Simpson, LLC
2 N. Charles Street, Suite 500
Baltimore, Maryland 21201

Howard R. Greenberg, Esquire
403 North Charles Street, Suite 200
Baltimore, Maryland 21201
Counsel for the debtors

Edmund A. Goldberg, Esquire
Office of the United States Trustee
300 West Pratt Street, Suite 350
Baltimore, Maryland 21201