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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

D.P. MANGAN, INC., Plaintiff and Appellant, v. KENNEDY HILLS ENTERPRISES, LLC, Defendant and Respondent.	B246199 (Los Angeles County Super. Ct. No. BC461621)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rolf M. Treu, Judge. Affirmed.

Christopher Wilson & Associates and Christopher F. Wilson for Plaintiff and Appellant.

Law Offices of Michael S. Magnuson and Michael S. Magnuson for Defendant and Respondent.

Plaintiff and appellant D.P. Mangan, Inc. (Mangan), doing business as Pave West, appeals from the summary judgment entered in favor of defendant and respondent Kennedy Hills Enterprises, LLC (Kennedy Hills) in Mangan's action for breach of contract and common counts. We affirm the judgment.

BACKGROUND

The parties

Kennedy Hills is the owner of certain real property in Riverside County, California, on which sand and gravel mining operations are permitted. Mangan is the 50 percent owner of Lubanko Brothers, Inc. (LBI), a company that provided rock crushing services to Kennedy Hills pursuant to a written contract dated March 17, 2008 (the Rock Crushing Agreement).

LBI's bankruptcy

LBI filed a chapter 7 bankruptcy petition on February 17, 2009. Accompanying LBI's chapter 7 petition were schedules of its assets and liabilities, as required by the federal Bankruptcy Code. Schedule B of the LBI petition is an official form prescribed by the Judicial Conference of the United States pursuant to the Federal Rules of Bankruptcy Procedure. The form lists various categories of the debtor's personal property (including accounts receivable and contingent and unliquidated claims of every nature) and provides blank spaces for the debtor to include a description of the property and the value of the debtor's interest in that property. LBI listed no property in Schedule B under any category. Donald Mangan, the former CEO of LBI, submitted a declaration under penalty of perjury on behalf of LBI stating that the schedules accompanying LBI's bankruptcy petition were true and correct to the best of his knowledge and belief. An order closing LBI's bankruptcy case was filed on May 20, 2011.

The instant lawsuit

Mangan filed this action against Kennedy Hills on May 24, 2011, alleging that it was owed $507,688.55 as LBI's assignee under the Rock Crushing Agreement. Kennedy Hills moved for summary judgment on two separate grounds. The first was based on LBI's failure to schedule any claim against Kennedy Hills in its chapter 7 bankruptcy

proceeding. The unscheduled claim, Kennedy Hills argued, did not revert to LBI upon the closing of its bankruptcy case, but remained in LBI's bankruptcy estate. LBI accordingly had no rights against Kennedy Hills to assign and Mangan acquired no claim against Kennedy Hills as the result of any purported assignment. The second ground asserted by Kennedy Hills for summary judgment was that Kennedy Hills had a right of offset against LBI that exceeded the amount of Mangan's claim.

Mangan opposed the summary judgment motion, arguing that the claim against Kennedy Hills was properly disclosed as having a zero dollar value on LBI's bankruptcy schedules and that the claim had been abandoned to LBI by operation of law at the close of its bankruptcy case and subsequently assigned by LBI to Mangan. Mangan further argued that Kennedy's offset defense raised triable issues of fact that could not be resolved without a trial.

In support of its opposition, Mangan submitted the declaration of LBI's former CFO, Bimmy Dhanapala. Dhanapala stated in her declaration that she attended a meeting of creditors during LBI's bankruptcy proceeding and at that meeting informed LBI's bankruptcy trustee about the nature of the work done by LBI for Kennedy Hills. Dhanapala further stated that the trustee retained counsel for the purpose of determining whether a claim could be pursued against Kennedy Hills in LBI's bankruptcy proceedings but ultimately decided not to pursue any claim against Kennedy Hills or to amend LBI's schedule of assets to include such a claim.

The trial court granted summary judgment in Kennedy Hills's favor, and this appeal followed.

DISCUSSION

I. Standard of review

Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact

necessary to resolve their dispute. [Citation.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).)

A defendant moving for summary judgment bears the initial burden of proving that there is no merit to a cause of action by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037.) Once the defendant has made such a showing, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. (*Aguilar, supra*, 25 Cal.4th at p. 849.) If the plaintiff does not make such a showing, summary judgment in favor of the defendant is appropriate. In order to obtain a summary judgment, "all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action . . . . [T]he defendant need not himself conclusively negate any such element . . . ." (*Id*. at p. 853.)

On appeal from a summary judgment, an appellate court makes "an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law. [Citations.]" (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222.)

II. Bankruptcy law principles

The filing of a bankruptcy petition "creates an estate . . . comprised of . . . all legal or equitable interests of the debtor in property as of the commencement of the case." (11 U.S.C. § 541(a)(1).) Property of the bankruptcy estate includes all of the debtor's interests in any cause of action that has accrued before the filing of the bankruptcy petition. (*Sierra Switchboard Co. v. Westinghouse Electric Corp.* (9th Cir. 1986) 789 F.2d 705, 707 (*Sierra*).)

Upon the filing of a bankruptcy petition, the debtor is required to file a schedule of its assets and liabilities, including any causes of action. (11 U.S.C. § 521(a)(1); *Sierra, supra*, 789 F.2d at p. 707.) An accrued cause of action becomes property of the

bankruptcy estate, even if it is not scheduled as an asset of the estate. (11 U.S.C. § 541(a); *Cusano v. Klein* (9th Cir. 2001) 264 F.3d 936, 945.) Property that is scheduled under section 521 of the Bankruptcy Code and that is not administered by the bankruptcy trustee at the time the bankruptcy case is closed is abandoned to the debtor by operation of law. (11 U.S.C. § 554(c).) Unscheduled property that is not administered or abandoned by the bankruptcy trustee remains in the bankruptcy estate after the case is closed. (11 U.S.C. § 554(d); *Alary Corp. v. Sims (In re Associated Vintage Group, Inc.)* (Bankr. 9th Cir. 2002) 283 B.R. 549, 566, fn. 14 (*Alary*); *Cusano v. Klein, supra,* at pp. 945-946.)

The trustee may abandon property that is "burdensome" to the estate or of little value after notice and a hearing (11 U.S.C. § 554(a)). Alternatively, the bankruptcy court, on motion, may order the abandonment of certain property. (11 U.S.C. § 554(b).)

III. No assignment of breach of contract claim

The parties do not dispute that any claim against Kennedy Hills for breach of the Rock Crushing Agreement accrued before LBI filed its bankruptcy petition and therefore became property of LBI's bankruptcy estate. They disagree as to what happened to that claim during the bankruptcy proceeding.

Kennedy Hills met its initial burden in the motion for summary judgment by showing that any cause of action for breach of the Rock Crushing Agreement was not scheduled, administered, or abandoned in LBI's bankruptcy proceeding and therefore remained in LBI's bankruptcy estate at the close of the bankruptcy case. The undisputed evidence showed that neither the Rock Crushing Agreement nor any cause of action for breach of that agreement was listed in any of the schedules of assets and liabilities LBI filed with the bankruptcy court. The unscheduled cause of action accordingly remained in LBI's bankruptcy estate and did not revert to LBI as the debtor even after the bankruptcy case was closed. (*Alary, supra,* 283 B.R. at p. 566, fn. 14; *Cusano v Klein, supra,* 264 F.3d at pp. 945-946.) LBI accordingly had no rights under the Rock Crushing Agreement, or any cause of action for breach of that agreement, to assign to Mangan, and Mangan acquired no rights or cause of action to assert against Kennedy Hills.

Mangan failed to raise any triable issue as to whether it acquired a cause of action against Kennedy Hills for breach of the Rock Crushing Agreement. Neither the Rock Crushing Agreement nor any claim against Kennedy Hills for breach of that agreement is listed on the schedule of assets that LBI filed with the bankruptcy court. Mangan argues that the $0 shown as the total value of LBI's interest in property on Schedule B, the schedule of personal property LBI filed with the bankruptcy court, "properly described the net value to LBI at that time of the rights under the LBI contract with Kennedy." Mangan's argument conflates valuation of an asset with an adequate description of that asset. Schedule B requires both. (USCS Bankruptcy R 1007(b); Official Form 6, Schedule B; *In re Mohring* (Bankr. E.D.Cal. 1992) 142 B.R. 389, 394-395.)

The Bankruptcy Code places an affirmative duty on a debtor to schedule its assets and liabilities. (11 U.S.C. § 521(a)(1).) A debtor has a duty to prepare schedules carefully, completely, and accurately. (*M&M Foods, Inc. v. Pacific American Fish Co., Inc.* (2011) 196 Cal.App.4th 554, 563-564 (*M&M Foods*); *Cusano v. Klein*, *supra*, 264 F.3d at p. 946.) "Although there are 'no bright-line rules for how much itemization and specificity is required,'" LBI "was required to be as particular as is reasonable under the circumstances." (*Cusano v. Klein, supra,* at p. 946.) The term "schedule," means, at a minimum, that the debtor identify an asset on its schedule of assets and liabilities. (See *In re Medley* (Bankr. M.D.Tenn. 1983) 29 B.R.84, 86-87 [the word "scheduled" has a specific meaning and refers only to assets listed in a debtor's schedule of assets and liabilities]; see also *Pace v. Battley* (B.A.P. 9th Cir. Alaska 1992) 146 B.R. 562, 565 [malpractice claim not listed in debtor's schedule of assets not properly scheduled and therefore not abandoned to debtor under title 11 United States Code section 554(c)].) A debtor's belief that an asset has no value to the bankruptcy estate does not eliminate the obligation to schedule the asset. (See *In re Semel* (3rd Cir. 1969) 411 F.2d 195, 196-197.) LBI's entry of "$0" as the total value of its personal property on Schedule B filed with the bankruptcy court, with no itemization or description of any property, was neither a reasonable nor a sufficient description of any cause of action against Kennedy Hills, particularly one that Mangan now seeks to assert in the amount of $507,688.

That LBI informed the bankruptcy trustee of the potential claim against Kennedy Hills raises no triable issue as to whether the claim was properly scheduled. "It is not enough that the trustee learns of the property through other means; the property must be scheduled pursuant to [title 11 United States Code] section 521(1)." (*Vreugdenhill v. Navistar Int'l Transp. Corp.* (8th Cir. 1991) 950 F.2d 524, 526 (*Vreugdenhill*).)

Mangan attempts to distinguish federal case authority that discusses a debtor's obligation to prepare complete and accurate schedules of its assets and liabilities (see, e.g., *Vreugdenhill, supra*, 950 F.2d 524; *Cusano v. Klein, supra*, 264 F.3d 936; *In re Mohring, supra*, 142 B.R. 389) on the ground that those cases involved individual chapter 7 debtors rather than a corporate debtor such as LBI. The duty to prepare schedules completely and accurately applies to both corporate and individual debtors, and the consequences for failing to do so are the same for both. (See *M&M Foods, supra*, 196 Cal.App.4th 554 [corporate debtor that failed to properly schedule a contract cause of action by not identifying the contract or the contracting party had no standing to assert unscheduled cause of action that did not revert to the debtor by operation of law at close of chapter 7 bankruptcy case].)

That Mangan, and not LBI, is the one seeking to assert the unscheduled breach of contract claim is of no consequence. Mangan, as LBI's assignee, could not acquire rights that LBI did not own. Mangan's arguments that it should not be judicially estopped from asserting the breach of contract claim are inapposite. Mangan is not being estopped from asserting a valid claim; it simply had no claim to assert. Equally inapposite is Mangan's argument that it is not LBI's alter ego. Kennedy Hills did not raise any alter ego argument in its motion for summary judgment, and the trial court did not grant the motion on that basis.

The absence of any wrongful intent by LBI in failing to schedule the claim does not alter the result. (*Vreugdenhill, supra*, 950 F.2d at p. 526 [rejecting debtor's argument that claim that was not concealed from the trustee was "necessarily scheduled"].) An accrued cause of action becomes property of the estate even if the debtor was unaware of the claim when it filed for bankruptcy protection. (*In re Lott* (Bankr. E.D.Mich. 2005)

332 B.R. 292, 293 [a debtor's knowledge of the existence of a cause of action is not relevant to whether it becomes property of the estate]; *Miller v. Pac. Shore Funding* (Bankr. D.Md. 2002) 287 B.R. 47, 50 ["Property of the debtor does not escape the bankruptcy estate merely because the debtor is unaware of its existence"].) A debtor's inadvertent failure to schedule a claim does not remove that claim from the bankruptcy estate.

Only claims that have been properly scheduled and that remain unadministered by the trustee at the close of the bankruptcy case revert to the debtor by operation of law. (11 U.S.C. § 554(c); *Vreugdenhill, supra*, 950 F.2d at p. 526.) Although unscheduled claims may be abandoned by the bankruptcy trustee (11 U.S.C. § 554(a)-(b)), Mangan presented no evidence of such abandonment in this case. The claim against Kennedy Hills therefore remained in LBI's bankruptcy estate. (*Sierra, supra*, 789 F.2d at pp. 709-710 [abandonment requires notice to creditors; emotional distress claim could not have been abandoned because there was no notice, therefore remained property of bankruptcy estate].) After the closure of its bankruptcy case, LBI had no claim that could be asserted against Kennedy Hills, and Mangan acquired no such claim as the result of any purported assignment by LBI. Summary judgment was therefore properly granted in favor of Kennedy Hills.

DISPOSITION

The judgment is affirmed. Kennedy Hills is awarded its costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.*
FERNS

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.