UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	)	CASE No.	16-21469 (JJT)
	)		
MICHAEL J. ROGAN,	)	CHAPTER	13
DEBTOR.	)		
	)	RE ECF Nos:	51, 53
	)		

APPEARANCES

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RULING AND ORDER ON CHAPTER 13 TRUSTEE'S MOTION TO DISBURSE FUNDS

I. INTRODUCTION

This matter is before the Court on the Motion to Disburse Funds to Either Debtor or Judgment Creditor ("Motion", ECF No. 51) filed by the Chapter 13 Trustee ("Trustee"), seeking an order instructing her where to release post-dismissal plan payments in light of a Connecticut Superior Court property execution ordering her to pay the funds to the judgment Creditor, Sally Rungee ("Creditor").

Aside from jurisdictional issues, the Motion raises serious concerns regarding the scope of Chapter 13 trustee immunity from legal process. This Court has examined the arguments of the parties and appropriate guidance from other jurisdictions on this issue, and in its

determination here, weighs the role and responsibilities of the Trustee and the implications for the Chapter 13 process where legal process of creditors against trustees might follow dismissal. This Court concludes that systemic protections are appropriate and contemplated by law and bankruptcy policy so as not to undermine the Chapter 13 procedure, cause trustees to incur legal expenses, or face the risk of litigation.

For the reasons set forth below, the Court holds that the property execution violates the *Barton* Doctrine because the Creditor did not seek leave of this Court before initiating such legal process against the Trustee in the Superior Court. The Court further holds that, even if the Creditor had sought permission from the Court, the Trustee, in these circumstances, would be entitled to quasi-judicial immunity and thus insulated from such legal process. Accordingly, the Objection is overruled and the Trustee is directed to disburse the funds in her possession to the Debtor as delineated herein.

II. FACTS

The Debtor filed a voluntary Chapter 13 petition on September 16, 2016 (ECF No. 1). At the time of filing, the Debtor was indebted to Sally Rungee ("Creditor") in the amount of $125,001.00, pursuant to a judgment entered against the Debtor in the Connecticut Superior Court. The Debtor scheduled the Creditor as a secured judgment lien creditor with a claim of $125,456.00 on his petition. Following the completion of a trial on the confirmation of the Debtor's Plan on April 21, 2017, but before a decision of this Court was issued, the Debtor filed a Motion for Voluntary Dismissal (ECF No. 47) on May 9, 2017. The motion was granted by the Court the same day, and the case was dismissed.

Despite dismissal, the Chapter 13 case remained open pending the filing of the Trustee's final report and administration of the bankruptcy estate. The Trustee was in the process of

preparing a final account and distribution of the funds when, on June 7, 2017, she was served with a property execution issued by the Connecticut Superior Court. The execution ordered the Trustee to cause to be levied, paid and satisfied to the Creditor the funds in her possession. At the time, the Trustee held $6,854.91 from the Debtor's monthly plan payments in escrow.

The Trustee filed the instant Motion on June 13, 2017, arguing that the *Barton* doctrine required the Creditor to seek leave from this Court before issuance of the state court execution. The Trustee also argued that the mandate of Section 1326(a)(2) of the Bankruptcy Code[1], which requires that a trustee return funds to the debtor if the plan is not confirmed, preempts the state court execution.[2] The Creditor filed the Objection to Trustee's Motion ("Objection", ECF No. 53) on June 26, 2017, arguing that the *Barton* doctrine is inapplicable because the property execution is not a lawsuit. The Creditor further advanced that because an order of dismissal entered, the automatic stay was terminated and the funds held by the Trustee were rightly subject to levy or garnishment by creditors of the Debtor.

On August 24, 2017, both parties delivered oral argument and the Court thereafter took the matter under advisement.

III. JURISDICTION

As a threshold matter, the Creditor asserts that the Court lacks jurisdiction over this matter because the Debtor's case was voluntarily dismissed.[3] However, pertinent here is the distinction that while the bankruptcy case was dismissed, the case was not closed. According to 11 U.S.C. § 350(a), "After an estate is fully administered and the court has discharged the

[1] Unless otherwise indicated, sectional references are to the United States Bankruptcy Code 11 U.S.C. §§ 101-1532.
[2] The Court need not decide the issue of preemption because, as set forth below, the property execution is of no force and effect.
[3] Although the Creditor cited no authority, the Court is aware of support for the position that a bankruptcy court loses jurisdiction once the case has been dismissed. *See In re Kevin Dube*, Case No. 16-20680, Doc. 68 (Bankr. M.E., August 28, 2017).

trustee, the court shall close the case." Here, the case remains open pending the final report of the Trustee and the full administration of the estate, which is typical of the Chapter 13 process. *See In re Aheong*, 276 B.R. 233, 239 (9th Cir. BAP 2002) ("[C]hapter 13 cases usually stay open after dismissal to deal with approval of the chapter 13 trustee's final report and discharge of the trustee and trustee's surety."). Therefore, the Court retains jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b), and derives its authority to hear and determine this matter on reference from the District Court pursuant to 28 U.S.C. §§ 157(a) and (b)(1).[4] This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

IV. DISCUSSION

A. The Property Execution is of No Force and Effect Because it Violated the *Barton* Doctrine

The *Barton* doctrine emerged from the United States Supreme Court case *Barton v. Barbour*, 104 U.S. 126, 128, 26 L. Ed. 672 (1881). There, the Supreme Court held that before suit is brought against a receiver, leave of the court by which he was appointed must be obtained. *Id.* at 136-37. This black letter doctrine has also been applied to bankruptcy matters, and courts have held that a court-appointed trustee cannot be sued for actions taken in the trustee's official capacity and within the trustee's authority unless leave is first obtained from the court that appointed the trustee. *See In re Lehal Realty Associates*, 101 F.3d 272, 276 (2d Cir. 1996) ("A well recognized line of cases starting with *Barton* extends such protection by requiring leave of the appointing court before a suit may go forward in another court against the trustee.") (citation

[4] To the extent that dismissal would divest this Court of jurisdiction, in the interests of justice and for cause shown, the Court will also cast and grant the Trustee's Motion as one brought under Federal Rule of Civil Procedure 60(b)(6). In any event, a bankruptcy court has broad jurisdiction to reopen a case *sua sponte*, as "the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *In re Castillo*, 297 F.3d 940, 945-46 (9th Cir. 2002) (quoting 11 U.S.C. § 105(a)); *see also* 11 U.S.C. § 350(b) ("A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.").

omitted); *See also Muratore v. Darr*, 375 F.3d 140, 145 (1st. Cir. 2004); *Allard v. Weitzman* (*In re DeLorean Motor Co*.), 991 F.2d 1236, 1240 (6th Cir. 1993); *Matter of Linton* (*In re Linton),* 136 F.3d 544, 546 (7th Cir. 1998); *In re Crown Vantage, Inc.*, 421 F.3d 963, 970-71 (9th Cir. 2005); *Carter v. Rodgers*, 220 F.3d 1249, 1252 (11th Cir. 2000); *In re VistaCare Group, LLC*, 678 F.3d 218, 224 (3d Cir. 2012). The rationale for this doctrine is that "[t]he requirement of uniform application of bankruptcy law dictates that all legal proceedings that affect the administration of the bankruptcy estate be brought either in bankruptcy court or with leave of the bankruptcy court." *In re Harris*, 590 F.3d 730, 742 (9th Cir. 2009) (citing *In re Crown Vantage, Inc*., 421 F. 3d at 971). The doctrine allows bankruptcy courts to maintain better control over the administration of the estate. *In re DeLorean Motor Co*., 991 F.2d at 1240.

The *Barton* doctrine is jurisdictional in nature, and failure to seek leave of the appointing court bars exercise of subject matter jurisdiction over any third-party suit. *See McIntire v. China MediaExpress Holdings, Inc.*, 113 F.Supp.3d 769, 774–75 (S.D.N.Y. 2015); *In re J & S Properties, LLC*, 545 B.R. 91, 98 (Bankr.W.D. Pa. 2015). "Where the [d]octrine is violated, [t]he only appropriate remedy ... is to order cessation of the improper action." *Securities Investor Protection Corp. v. Bernard L. Madoff Inv. Securities, LLC*, 460 B.R. 106, 116 (Bankr. S.D.N.Y. 2011) (quoting *In re Crown Vantage*, 421 F.3d at 970).

Here, it is undisputed that the Creditor did not obtain leave of this Court before it initiated proceedings[5] in the state court by causing the property execution to be served on the Trustee.[6]

[5] The integrity of bankruptcy jurisdiction justifies the expansion of the scope of the *Barton* doctrine beyond lawsuits to other legal process. This is in line with the rationale that "all legal proceedings that affect the administration of the bankruptcy estate be brought either in bankruptcy court or with leave of the bankruptcy court." *See In re Harris*, 590 F.3d at 742. *See also In re James* (applying *Barton* doctrine where Creditor caused state court issuance of a third party citation to discover assets on the trustee); *In re Shields*, 431 B.R. 446, 452 (Bankr. S.D.Ind. 2010) (discussing applicability of the *Barton* doctrine where creditor served trustee with state court order of attachment).

[6] The Creditor, as an alternative, could have elected to serve a property execution upon the Debtor or his financial institution after the funds were disbursed to the Debtor, or could have sought equitable relief from the Connecticut

Accordingly, the property execution is of no legal force and effect, as the state court lacked subject matter jurisdiction to issue the property execution against the Trustee. This fact, alone, necessitates that the Creditor's objection be overruled. *See In re James*, 490 B.R. 795, 798 (Bankr. N.D. Ill. 2013) ("Failure to follow the established procedure requiring prior permission from the Bankruptcy Court is grounds in itself to overrule the Creditors' objection.").

There are two exceptions to the *Barton* doctrine, the first of which is statutory. Section 959(a) of Title 28 of the United States Code provides, "Trustees, receivers or managers of any property ... may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property." 28 U.S.C. § 959(a). The second narrowly defined exception to the *Barton* doctrine applies only to actions that are completely outside of the scope of the trustee's official capacity and authority, or *ultra vires*. *See In re Biebel*, 2009 WL 1451637, at *4–5 (Bankr. D.Conn. 2009) (citing *DeLorean Motor Co.*, 991 F.2d at 1240). The classic application of this exception is when a trustee wrongfully seizes property that is not properly a part of the bankruptcy estate. *See Leonard v. Vrooman*, 383 F.2d 556, 560 (9th Cir.1967).

It is clear that neither exception applies here. First, it is well established that Section 959 is inapplicable where a trustee, acting in his or her official capacity, conducts no business connected with the property other than to perform administrative tasks necessarily incident to the consolidation, preservation, and liquidation of assets in a debtor's estate. *See Lehal Realty*, 101 F.3d at 276. Given that there is no current business being carried out in connection with this case, this narrow statutory exception is inapplicable.

Superior Court in aid of execution to freeze such funds once disbursed. Either course would appropriately extricate a trustee from ancillary legal process.

This Court also rejects the Creditor's argument that the Trustee's failure to comply with the property execution and pursuit of the Motion falls within the *ultra vires* exception. The Trustee's acts in question here—collecting and disbursing funds given to her by the Debtor on behalf of the bankruptcy estate—unquestionably fall within the scope of her duties as a Chapter 13 trustee. Further, the Trustee's Motion seeking this Court's direction on where to disburse these funds is an act in furtherance of her duty. Because the *Barton* doctrine exists to ensure that other courts do not intervene in the bankruptcy court's administration of an estate without permission, a holding that the Trustee here "acted *ultra vires* simply because [s]he discharges [her] duties as trustee [] would severely undermine this important judicial goal." *Satterfield v. Malloy*, 700 F.3d 1231, 1237 (10th Cir. 2012)

As the Seventh Circuit Court of Appeals in *In re Linton*, 136 F. 3d at 545, cogently explained:

> Without the requirement [of leave], trusteeship will become a more irksome duty, and so it will be harder for courts to find competent people to appoint as trustees. Trustees will have to pay higher malpractice premiums, and this will make the administration of the bankruptcy laws more expensive.... Furthermore, requiring that leave to sue be sought enables bankruptcy judges to monitor the work of the trustees more effectively.

In the administration of Chapter 13 estates, closing inclusive, trustees should not be required to defend against or otherwise appear in state court each time they are served with a property execution, garnishment, or other legal process that competes with Chapter 13 case administration.

B. The Trustee is Entitled to Quasi-Judicial Immunity

The doctrine of quasi-judicial immunity erects an independent bar against service of a property execution upon a bankruptcy trustee. Although the Bankruptcy Code is silent on the

immunity afforded trustees, it is well settled that bankruptcy trustees are entitled to such immunity derived from their conduct as quasi-judicial officials. *See Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 433, 113 S. Ct. 2167, 124 L.Ed.2d 391 (1993); *Forrester v. White*, 484 U.S. 219, 225-28, 108 S. Ct. 538, 543-545, 98 L.Ed.2d 555 (1988); *In re Castillo*, 297 F.3d at 947.

In *Antoine*, the Supreme Court established a two-part test for determining whether a judicial officer is entitled to quasi-judicial immunity. First, a court must undertake "a considered inquiry into the immunity historically accorded the relevant official at common law and the interest behind it." *Id*. at 432, 113 S. Ct. at 2170. Second, a court must consider whether a judge, if performing the action at issue, would be entitled to absolute immunity. *Id.* at 435, 113 S. Ct at 2171.

The Ninth Circuit Court of Appeals in *Castillo*, 297 F.3d at 950, affirmatively answered the first prong of this test as it applies to bankruptcy trustees, stating:

> Thus the common-law and nineteenth century antecedents of the modern bankruptcy trustee were entrusted with both administrative and adjudicatory functions. To the extent the trustee performed the functions of a modern-day bankruptcy judge, immunity would have extended to the performance of these common-law adjudicatory functions.

In other words, bankruptcy trustees and their predecessor counterparts historically have been afforded absolute quasi-judicial immunity because they perform some functions that are judicial in nature.

Under the second prong, the Court must determine whether immunity covers the function in the case at hand by looking to "the nature of the function performed and not to the identity of the actor performing it." *Id*. at 948 (citing *Buckley v. Fitzsimmons*, 509 U.S. 259, 273, 113 S. Ct. 2606, 125 L.E.2d 209 (1933). "The touchstone for the doctrine's applicability has been

performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." *Antoine*, 508 U.S. at 435-36, 113 S. Ct. at 2171 (internal quotations and citations omitted). Therefore, "[w]hen judicial immunity is extended to officials other than judges, it is because their judgments are functionally comparable to those of judges—that is, because they, too, exercise a discretionary judgment as part of their function." *Id*. at 436, 113 S. Ct. at 2171 (internal quotations and citations omitted). This requires a case-by-case analysis, because although the trustee is "charged with many legal, adjudicative, clerical, financial, administrative, and business functions, quasi-judicial immunity attaches to only those functions essential to the authoritative adjudication of private rights to the bankruptcy estate". *In re Castillo*, 297 F. 3d at 951.

Here, the act in question is disbursing the Debtor's plan payments, which is one of the many statutory duties charged to the Trustee under the Bankruptcy Code. Like the Chapter 7 trustee, the Chapter 13 trustee is responsible for overseeing and administering the bankruptcy estate[7], and the disposition of a debtor's payments when a plan is not confirmed is one such duty delegated to the trustee.[8] This Court construes these duties as inextricably linked with the Court's functions in the Chapter 13 bankruptcy process. It follows then that the Trustee's acts are "essential to the authoritative adjudication of private rights to the bankruptcy estate." *In re Cedar Funding, Inc.*, 419 B.R. 807, 823 (9th Cir. BAP 2009) (quoting *In re Castillo*, 297 F. 3d at 951).

[7] Section 1302(b)(1) includes among the Chapter 13 trustee's duties those listed in the following subsections of Section 704(a): (2) "be accountable for all property received," (3) "ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B) of this title," (4) "investigate the financial affairs of the debtor," (5) "if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper," (6) "if advisable, oppose the discharge of the debtor," (7) "unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest," and (9) "make a final report and file a final account of the administration of the estate with the court and with the United States trustee." 11 U.S.C. § 704(a).

[8] Section 1326(a)(2) reads, in pertinent part, "if a plan is not confirmed, the trustee shall return any such payments…to the debtor, after deducting any unpaid claim allowed under section 503(b)." 11 U.S.C. § 1326(a)(2).

Further, it is settled in the Second Circuit that trustees are entitled to immunity where they act under a specified adjudicative or administrative authority granted by statute. *Bernard L. Madoff Inv. Sec. LLC*, 440 B.R. at 290 (quoting *In re Smith*, 400 B.R. 370, 377 (Bankr. E.D.N.Y. 2009) (finding that a quasi-judicial official enjoys immunity from suit for personal liability for acts taken as a matter of business judgment in acting in accordance with statutory duty).

Accordingly, under these circumstances, the Trustee is protected by the quasi-judicial immunity doctrine. The funds held in her possession should be disbursed to the Debtor, pursuant to Section 1326(a)(2). *See In re Locascio*, 481 B.R. 285, 289 (Bankr. S.D.N.Y. 2012) ("The plain language of section 1326(a)(2), [and] the policies behind that provision…mandate return of plan payments directly to the debtor upon dismissal, despite the existence of a garnishment.").

IT IS ORDERED that the effectiveness of this Ruling and Order is stayed for fourteen (14) days; it is also,

ORDERED that the Trustee is authorized and directed to disburse such funds to the Debtor, pursuant to Section 1326(a)(2), following the expiration of the stay herein; it is further,

ORDERED that the Creditor shall refrain from pursuing further legal process against the Trustee to secure such monies.

Dated at Hartford, Connecticut this 18th day of September 2017.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut