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SIXTH DIVISION
September 30, 2014

No. 1-14-0074

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| RACHEL DEWEESE, on Behalf of Herself and All Others Similarly Situated, and SHAKENA JAMERSON, on Behalf of Herself and All Others Similarly Situated, | ) | Appeal from the Circuit Court of Cook County. |
| Plaintiffs-Appellants, | ) | |
| v. | ) | No. 12 CH 18713 |
| STRATFORD CAREER INSTITUTE, INC., a District of Columbia Corporation, | ) | Honorable Rodolfo Garcia, |
| Defendant-Appellee, | ) | Judge Presiding. |

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JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held*: Dismissal with prejudice of this putative class action lawsuit is affirmed, where the bankruptcy filings of the putative class representatives rendered them unable to either pursue their own individual claims or act as adequate class representatives.

¶ 2 Plaintiffs-appellants, Rachel Deweese and Shakena Jamerson, on behalf of themselves and all others similarly situated, filed this putative class action lawsuit against defendant-appellant, Stratford Career Institute, Inc., a District of Columbia Corporation (Stratford), seeking to recover for damages allegedly caused by Stratford's breach of contract and consumer fraud in offering a "high school degree program that does not really award legitimate academic

credentials." The circuit court dismissed plaintiffs' second-amended complaint with prejudice, and plaintiffs filed the instant appeal. We affirm that dismissal because—as has become apparent during the briefing of this appeal—the bankruptcy filings of both named plaintiffs render them unable to either pursue any individual claims against Stratford, or act as adequate class representatives on behalf of any others similarly situated.

¶ 3 I. BACKGROUND

¶ 4 We recite here only those facts necessary for our resolution of the implications of plaintiffs' bankruptcy filings.

¶ 5 On May 18, 2012, plaintiffs filed their initial complaint against Stratford in the circuit court. Therein, plaintiffs generally alleged that Stratford had wrongfully sold "high school diploma" correspondence courses to them and other Illinois residents, even though those courses where "worthless" in that they were "of no recognized academic value" and were not accepted as prerequisites for enrollment at postsecondary institutions. Plaintiffs further alleged that they, and other Illinois residents similarly situated, had paid significant amounts in tuition to Stratford—and spent considerable amounts of time and effort completing coursework—for Stratford's "worthless" diplomas. Plaintiffs, therefore, sought: (1) to recover for Stratford's purported violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2008)); (2) rescission of their "enrollment agreements" with Stratford; and (3) an injunction barring Stratford from continuing to offer its high school diploma program. In addition, plaintiffs sought similar relief on behalf of a class of similarly situated individuals.

¶ 6 Stratford successfully moved to dismiss plaintiffs' initial and first-amended complaints, and plaintiffs, thereafter, filed the operative second-amended complaint on May 15, 2013.

Therein, plaintiffs alleged similar—albeit more detailed—allegations and sought to recover, on behalf of themselves and all other Illinois residents similarly situated, for Stratford's purported violations of the Consumer Fraud Act and its breach of contract. Plaintiffs also repeated their request for an injunction against Stratford.

¶ 7 On June 24, 2013, Stratford filed a combined motion to dismiss plaintiffs' second-amended complaint pursuant to sections 2-615, 2-619, and 2-619.1 of the Code of Civil Procedure (Code). 735 ILCS 5/2-615, 2-619, 2-619.1 (West 2012). After briefing and oral argument, the circuit court granted Stratford's section 2-615 motion, and dismissed plaintiffs' second-amended complaint, with prejudice, on December 16, 2013. The circuit court specifically concluded: (1) plaintiffs' individual claims under the Consumer Fraud Act were insufficiently pled, where they failed to properly plead reliance as required by the Consumer Fraud Act and, furthermore, that any claim of misrepresentation was vitiated by certain disclaimers provided by Stratford; (2) the enrollment agreements as alleged by plaintiffs did not support a claim for breach of contract; and (3) with respect to the class-action allegations, there was insufficient "commonality" among the purported class members to allow a class action to go forward. Plaintiffs filed a timely notice of appeal from this decision on January 3, 2014.

¶ 8 Thereafter, the parties filed their appellate briefs in this court. Stratford's brief contends that, after plaintiffs had filed the instant appeal, Stratford learned plaintiffs had each individually filed voluntary petitions for bankruptcy under chapter 7 of the United States Bankruptcy Code (Bankruptcy Code). 11 U.S.C. § 101 *et seq.* (2008). Stratford further contended that while those bankruptcy proceedings had been completed prior to the initial filing of the instant lawsuit, plaintiffs had never revealed their bankruptcy filings below. Copies of the bankruptcy court records for each plaintiff were attached to an appendix to Stratford's brief, and Stratford asked

this court to take judicial notice of those records. Finally, Stratford argued that, because plaintiffs had also failed to disclose their potential claims against Stratford in their bankruptcy proceedings, they were each judicially estopped from pursuing those claims in the context of this suit. Stratford contended that, therefore, the circuit court's dismissal of plaintiffs' individual claims should be affirmed, and the class allegations were also properly dismissed because plaintiffs are not adequate representatives.

¶ 9 In their reply brief, counsel for plaintiffs contended that he too was unaware of plaintiffs' prior bankruptcy filings before the filing of Stratford's appellate brief in this matter. After acknowledging that this court could take judicial notice of the bankruptcy court records for each plaintiff, plaintiffs' counsel nevertheless asserted that this court should reject Stratford's judicial estoppel argument.

¶ 10 II. ANALYSIS

¶ 11 On appeal, the parties dispute the propriety of the circuit court's dismissal of plaintiffs' second-amended complaint with prejudice. As discussed above, Stratford also relies—in part—on its contention that plaintiffs are judicially estopped from either pursuing their individual claims against Stratford, or acting as adequate class representatives on behalf of any others similarly situated by virtue of their bankruptcy filings. While we utilize slightly different reasoning, we agree that plaintiffs' bankruptcy filings require us to affirm the circuit court's dismissal of this suit.

¶ 12 The circuit court dismissed plaintiffs' second-amended complaint for a number of reasons, including for the reasons stated in Stratford's section 2-615 motion to dismiss. Such a motion attacks the legal sufficiency of the complaint. *R&B Kapital Development, LLC v. North Shore Community Bank & Trust Co.*, 358 Ill. App. 3d 912, 920 (2005). "The proper inquiry is

whether the well-pleaded facts of the complaint, taken as true and construed in a light most favorable to plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Loman v. Freeman*, 229 Ill. 2d 104, 109 (2008). A trial court's decision to grant a motion to dismiss pursuant to section 2-615 is reviewed *de novo*. *Collins v. Superior Air-Ground Ambulance Service, Inc.*, 338 Ill. App. 3d 812, 815 (2003).

¶ 13 Because our review is *de novo*, however, we need not defer to the circuit court's reasoning. *Manago ex rel. Pritchett v. County of Cook*, 2013 IL App (1st) 121365, ¶ 15. The circuit court's judgment may therefore be affirmed for any reason, and upon any ground warranted. *Id.* ¶ 16. " 'It is the judgment and not what else may have been said by the lower court that is on appeal to a court of review.' " *Id.* (quoting *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 387 (1983)).

¶ 14 Furthermore, in ruling upon the propriety of a section 2-615 motion, both the circuit court and this court are entitled to consider matters of which we may take judicial notice. *Pooh–Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009); 735 ILCS 5/8-1001 (West 2012); 735 ILCS 5/8-1002 (West 2012). Thus, this court "may take judicial notice of readily verifiable facts if doing so 'will "aid in the efficient disposition of a case," ' even if judicial notice was not sought in the trial court." *Aurora Loan Services, LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 37 (quoting *Department of Human Services v. Porter*, 396 Ill. App. 3d 701, 725 (2009)). The court records of plaintiffs' federal bankruptcy filings—which are contained in the appendix to Stratford's brief on appeal and have been confirmed by this court's review of the online docket for the United States Bankruptcy Court for the Northern District of Illinois—are among the readily verifiable facts of which we may properly take judicial notice. *Curtis v. Lofy*, 394 Ill. App. 3d 170, 172 (2009) (recognizing that public documents, including court records, are

subject to judicial notice); *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 169 (2005) (same); *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 118, n. 9 ("We may take judicial notice of information on a public website, even where the information does not appear in the record.").[1]

¶ 15 Thus, we may properly take judicial notice of the facts revealed in the records of plaintiffs' federal bankruptcy filings in deciding this appeal. The significance of those facts, considered in conjunction with the allegations contained in the second-amended complaint, becomes clear in light of a number of fundamental tenants of bankruptcy law.

¶ 16 Specifically, pursuant to section 541(a)(1) of the Bankruptcy Code, a voluntary chapter 7 bankruptcy filing creates a bankruptcy estate that includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (West 2008). Under this definition, "virtually all property of the debtor" becomes property of the bankruptcy estate. *In re Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993). The assets of the bankruptcy estate include a debtor's causes of action. *Holland v. Schwan's Home Services, Inc.*, 2013 IL App (5th) 110560, ¶ 116; *In re Polis*, 217 F.3d 899, 901 (7th Cir. 2000). Thus, where the legal claim on which a suit is based arises out of a transaction that occurs before the bankruptcy petition is filed, it is "property" of the debtor and, hence, automatically becomes a part of the debtor's bankruptcy estate. *In re Polis*, 217 F.3d at 902.

¶ 17 We further note that it is a debtor's duty to file a schedule of all assets existing at the time the petition for relief is filed. 11 U.S.C. § 521(1) (West 2008). Even if a debtor fails to list the cause of action as an asset, it nevertheless becomes property of the estate pursuant to section 541(a)(1) of the Bankruptcy Code. *Dailey v. Smith*, 292 Ill. App. 3d 22, 25 (1997).

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[1] We further note that plaintiffs have not disputed the authenticity or accuracy of these records on appeal, and actually concede that this court may take judicial notice of them.

¶ 18 It is true that, any scheduled property not administered at the time of the closing of the bankruptcy case, is abandoned to the debtor and deemed administered. 11 U.S.C. § 554(c) (West 2008). However, "an unscheduled asset is not abandoned by a trustee to a debtor when the case is closed." *In re Enyedi*, 371 B.R. 327, 333 (Bankr. N.D. Ill. 2007). Thus, where a prepetition cause of action is not scheduled by the debtor or administered by the trustee prior to the closing of a debtor's bankruptcy case, any such cause of action remains the property of the estate. *Id.* at 333; 11 U.S.C. § 554(d) (West 2008).

¶ 19 It is also true that a debtor has the ability to remove certain property from the bankruptcy estate by claiming an exemption. 11 U.S.C. § 522(l) (West 2008); 735 ILCS 5/12-1001 (West 2008). However, the Federal Rules of Bankruptcy Procedure mandate that "[a] debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed ***." Fed. R. Bankr. P. 4003(a); *In re Rhinebolt*, 131 B.R. 973, 978 (Bankr. S.D. Ohio 1991) ("the duty of claiming an exemption is that of the debtor"). Thus, where a debtor fails to claim an exemption for specific property, that property remains a part of the bankruptcy estate. *Schwab v. Reilly*, 560 U.S. 770, 774 (2010) ("When a debtor files a Chapter 7 bankruptcy petition, all of the debtor's assets become property of the bankruptcy estate (citation), subject to the debtor's right to reclaim certain property as 'exempt,' (citation).)."

¶ 20 Finally, it is well recognized that "the Chapter 7 trustee has the exclusive right to pursue claims on behalf of the estate[.]" (Emphasis in original.) *Agri-Best Holdings, LLC v. Atlanta Cattle Exchange, Inc.*, 812 F. Supp. 2d 898, 900 (N.D. Ill. 2011) (citing *Cable v. Ivy Tech State College*, 200 F.3d 467, 472-74 (7th Cir.1999)); *In re Enyedi*, 371 B.R. at 332 ("Once a chapter 7 bankruptcy petition has been filed, the trustee holds the exclusive right to pursue the debtor's pre-petition causes of actions."). As such, only the trustee may pursue a cause of action included in

the bankruptcy estate, because the trustee is the real party in interest *Parker v. Wendy's International, Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004).

¶ 21 A review of plaintiffs' bankruptcy records reflect that: (1) on September 10, 2009, and March 16, 2011, respectively, both Ms. Deweese and Ms. Jamerson filed voluntary petitions for bankruptcy under chapter 7 of the Bankruptcy Code; (2) neither Ms. Deweese nor Ms. Jamerson listed a potential cause of action against Stratford as personal property in their bankruptcy petitions, nor did either claim that any such suit should be exempt from the bankruptcy estate; (3) on December 22, 2009, and June 28, 2011, respectively, both Ms. Deweese and Ms. Jamerson were awarded a discharge of their debts by the bankruptcy court; and (4) on December 28, 2009, and July 1, 2011, respectively, the bankruptcy cases of both Ms. Deweese and Ms. Jamerson were closed.

¶ 22 Returning to the allegations contained in the second-amended complaint, it is specifically alleged that Ms. Deweese: (1) enrolled at Stratford in April of 2008, ultimately paying Stratford $799 in tuition and fees; (2) completed class work for Stratford's high school diploma course of study in June of 2009, receiving a "high school diploma" from Stratford that same month; and (3) discovered that her Stratford diploma was illegitimate when, in July of 2009, she could not obtain admission to Everest College in Chicago after one of its admissions personnel informed Ms. Deweese that Stratford was a "diploma mill" providing credentials unacceptable for admission. It was further alleged that Stratford's various actions in marketing and providing such an illegitimate high school diploma to her constituted consumer fraud and breach of contract, and that Ms. Deweese was damaged thereby.

¶ 23 It is apparent from these allegations that Ms. Deweese's legal claims against Stratford arise out of a transaction that occurred before her bankruptcy petition was filed on September 10,

2009, and were, therefore, "property" that automatically became part of her bankruptcy estate. *In re Polis*, 217 F.3d at 902. It does not matter that she failed to list her potential cause of action in her bankruptcy petition; it is still property of the estate. *Smith*, 292 Ill. App. 3d at 25. Moreover, her failure to claim any possible exemption for her claims against Stratford has resulted in those claims remaining part of her bankruptcy estate, even though her bankruptcy proceedings are now closed. *In re Enyedi*, 371 B.R. at 333; *Reilly*, 560 U.S. at 774. As such, Ms. Deweese was not and is not the proper party to pursue any claims against Stratford; that right still belongs to the trustee. *Parker*, 365 F.3d at 1272.

¶ 24 We come to a similar conclusion with respect to the claims of Ms. Jamerson. The second-amended complaint alleged that Ms. Jamerson: (1) was enrolled as a student with Stratford from 2007 to April of 2008, ultimately paying Stratford $589; (2) completed class work for Stratford's high school diploma course of study in April of 2008, receiving a "high school diploma" from Stratford that same month; and (3) discovered that her Stratford diploma was illegitimate when, in May of 2012, she could not obtain admission to MacCormac College after its student services director informed Ms. Jamerson that Stratford's diploma was unacceptable for admission. Similarly to Ms. Deweese's claims, it was also alleged that Stratford's various actions in marketing and providing such an illegitimate high school diploma to her constituted consumer fraud and breach of contract, and that Ms. Jamerson was damaged thereby.

¶ 25 Indeed, for purposes of this discussion, the only potential difference between the claims of Ms. Deweese and Ms. Jamerson is that Ms. Jamerson alleges she did not "discover" her claim against Stratford until May of 2012, well after her bankruptcy case closed on July 1, 2011. However, Ms. Jamerson specifically alleges she was enrolled at Stratford in 2007 and 2008, and received her diploma in April of 2008. She did not file her bankruptcy petition until March 16,

2011. As we discussed above, where a suit is based upon a transaction that occurs before the bankruptcy petition is filed, it automatically becomes part of the debtor's bankruptcy estate. *In re Polis*, 217 F.3d at 902. Moreover, "a debtor's actual knowledge of a claim is irrelevant to whether [s]he had a property interest at the time of bankruptcy." *Putzier v. Ace Hardware Corp.*, 13 C 2849, 2014 WL 2928236, at *12 (N.D. Ill. June 25, 2014) (collecting cases). Thus, whether she was aware of this injury or not, Ms. Jamerson's claim arose prior to her bankruptcy and, thus, belongs to the bankruptcy estate. *Id.*

¶ 26 In light of the above discussion, we conclude that plaintiffs do not have the right to pursue their individual claims against Stratford. We, therefore, conclude that their individual claims were properly dismissed as failing to state valid causes of action, whether we view these circumstances as presenting: (1) a lack of jurisdiction (*Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002) (in order to invoke the jurisdiction of the circuit court, a plaintiff's case must present a "justiciable matter;" *i.e.*, "a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests")); (2) a lack of standing (*In re Enyedi*, 371 B.R. at 332 (recognizing that only the trustee has standing to prosecute or defend a claim belonging to the estate)); or (3) a moot proceeding (*In re Torry G.*, 2014 IL App (1st) 130709 ¶ 26 ("An appeal is moot where no actual controversy is presented ***.")).

¶ 27 We also conclude that the class action allegations of the second-amended complaint were properly dismissed, in light of plaintiffs' bankruptcy filings. Among the prerequisites for the maintenance of a class action in Illinois are that "the representative parties will fairly and adequately protect the interest of the class." 735 ILCS 5/2-801(3) (West 2012). It is well

recognized that "[a] representative cannot adequately represent a class when the representative does not state a valid cause of action." *De Bouse v. Bayer*, 235 Ill. 2d 544, 560 (2009). Such a situation is presented here.

¶ 28 Finally, we reject plaintiffs' request that plaintiffs' counsel be granted time to find additional class representatives. In support of this request, plaintiffs cite to *U.S. Parole Commission v. Geraghty*, 445 U.S. 388 (1980). We fail to see the relevance of *Geraghty* to this request, where that case solely addressed the continuing standing of a named putative class representative to pursue an appeal of the denial of class certification when his own personal claim had subsequently been rendered moot. *Id.* at 404-05. It did not address a situation where, as here, the named putative class representatives' own claims failed to state causes of action in the first instance, and does not speak to the possibility of granting time to find additional class representatives in such a situation. Indeed, Illinois courts recognize that a dismissal for failure to state a cause of action renders moot any subsequent questions regarding the certification of a potential class. *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 156 (2002). We, therefore, reject plaintiffs' request.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 31 Affirmed.