The Barton Doctrine

Filing a Lawsuit Against a Bankruptcy Trustee or the Bankruptcy Trustee's Counsel

By Sonya N. Goll

At a Glance

For parties wishing to sue the bankruptcy trustee or the trustee's counsel, obtaining leave of the bankruptcy court must be accomplished before any suit can be filed. Failure of plaintiffs to obtain leave before filing suit would likely result in the dismissal of their lawsuit with prejudice and possible awarding of sanctions against the plaintiff by the bankruptcy court, including attorney fees and costs incurred in having the case dismissed.

In *Barton v Barbour* 139 years ago, the United States Supreme Court held that leave of the court appointing a receiver must be obtained before a suit may be brought against a receiver.[1] In *Barton*, John S. Barbour was appointed receiver for Virginia Midland and Great Southern Railroad Company by Virginia's circuit court for the city of Alexandria. While riding on a train owned by Virginia Midland, Frances H. Barton was injured when she was thrown from her sleeping car.[2] Barton, without obtaining leave of the Virginia circuit court, filed suit against Barbour in his capacity as receiver in the Supreme Court for the District of Columbia. The D.C. Court, relying on the Supreme Court case *Davis v Gray*,[3] dismissed Barton's suit against Barbour for lack of jurisdiction based on her failure to obtain leave of the court that had appointed Barbour.[4]

In the *Davis* case, Davis was a receiver like Barton who had been appointed for a railroad company. However, unlike Barton who was a defendant in the underlying case, Davis was the plaintiff who sued the governor of Texas for a breach of contract. The state of Texas argued that the receiver did not have the authority to sue Texas bureaucrats in their official or individual capacities.[5] The Supreme Court in *Davis* upheld the receiver's right to bring the lawsuit, stating:

> A receiver is appointed upon a principle of justice for the benefit of all concerned…The court will not allow him to be sued touching the property in his charge, nor for any malfeasance as to the parties, or others, without its consent; nor will it permit his possession to be disturbed by force, nor violence to be offered to his person while in the discharge of his official duties.[6]

Barton appealed the decision by the D.C. Court to the United States Supreme Court. On appeal, the Supreme Court expanded its ruling in *Davis*, finding that the prohibition to bringing suit against a receiver without leave of the appointing court applied to any suit against a receiver for a money demand. The Court reasoned that "[t]he evident purpose of a suitor who brings his action against a receiver without leave is to obtain some advantage over the other claimants upon the assets in the receiver's hands."[7]

The Supreme Court largely concerned itself with the need to consolidate control over the assets of a receivership estate in one court to avoid the haphazard liquidation and claims resolution process that receiverships are intended to avoid. The Court agreed that the D.C. Court lacked jurisdiction to hear Barton's case without leave being obtained by the court that appointed the receiver.[8]

The Barton doctrine, as it came to be known, was extended to include bankruptcy trustees, with subsequent courts reasoning that, much like a receiver, a trustee was appointed by the court to oversee the debtor's estate and, therefore, was "an officer of the court" whose "possession [was] protected because it [was] the court's"[9] and, therefore, requires that a party seek the leave of the bankruptcy court if they wish "to institute an action in a [state] forum against a trustee, for the acts done in the trustee's official capacity and within the trustee's authority as an officer of the court."[10]

In *In re DeLorean Motor Co*, the prohibition against filing suit against a bankruptcy trustee without leave of the bankruptcy court was further expanded to counsel for the bankruptcy trustee.[11] The Sixth Circuit Court of Appeals held that where counsel for the trustee acts at the trustee's direction for the *purposes* of administering the bankruptcy estate or the protection of estate assets, the trustee's counsel is the functional equivalent of the trustee for whom the Barton doctrine applies.[12] The Court determined that

> [t]he protection that the leave requirement affords the Trustee and the estate would be meaningless if it could be avoided by simply suing the Trustee's attorneys. Therefore, leave of the Bankruptcy Court must be granted before a suit may be brought against counsel for the trustee, in its capacity as counsel for the trustee,…since such suit is essentially a suit against the trustee.[13]

The Barton doctrine addresses several policy concerns. The requirement for court approval is necessary to ensure a consistent and equitable administration of estate property.[14] Because a judgment against the trustee in his capacity as trustee would be satisfied out of estate property, the effect of a suit brought without leave to recover such a judgment would be

> to take property of the [estate] from the [trustee's] hands and apply it to the payment of the plaintiff's claim, without regard to the rights of other creditors or the orders of the court which [was] administering the [estate] property. In other words, the plaintiff would be able to "obtain [an] advantage over the other claimants" as to the distribution of "the assets in the [trustee's] hands."[15]

Further, if the judgment "were recovered outside the [ ] jurisdiction" of the court administering the estate assets (i.e., the bankruptcy court), that court would be "impotent" to prevent enforcement of the judgment.[16] Thus, requiring a party with claims against the trustee to obtain permission from the bankruptcy court before filing suit in another jurisdiction would prevent the "usurpation of the powers and duties which belonged exclusively to [the bankruptcy] court" and protect "the duty of that court to distribute the [estate] assets to creditors equitably and according to their respective priorities."[17]

As the United States Supreme Court explained 10 years after *Barton* in *McNulta v Lochridge*, the Barton doctrine was not dependent on any federal statute, but instead was based on principles of common law.[18] Accordingly, after *Barton*, courts in "[a]n unbroken line of cases"[19] imposed as a matter of federal common law, a requirement that a party seeking to sue an equity receiver must first obtain the permission of the appointing court.[20] Absent such permission, no other

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courts would have jurisdiction to hear the suit.[21] As the Court found in *Porter v Sabin*, "(i)t is for [the appointing] court, in its discretion, to decide whether it will determine for itself all claims of or against the receiver, or will allow them to be litigated elsewhere."[22]

Second, a trustee is a fiduciary overseen by the bankruptcy court.[23] Although trustees now aid bankruptcy judges in monitoring certain aspects of the bankruptcy proceedings, the bankruptcy court is the entity primarily responsible for authorizing acts by the trustee and who retains the ability to remove a trustee for cause.[24] Therefore, a trustee is not just another advocate that appears before the bankruptcy court; instead, the trustee remains, for all intents and purposes, an officer of the bankruptcy court.[25]

Without a court approval requirement, a trustee's role would become a "more irksome duty," thereby discouraging qualified people from serving as trustees.[26] Additionally, court approval would require prospective plaintiffs to set forth to the bankruptcy court the basis of their claims against the trustee, allowing the court to monitor the work of the trustee more effectively and ensuring that the trustee is satisfying his obligations.[27]

For parties wishing to sue the bankruptcy trustee or the trustee's counsel, obtaining leave of the bankruptcy court must be accomplished before any suit can be filed. Failure of plaintiffs to obtain leave before filing suit would likely result in the dismissal of their lawsuit with prejudice and possible awarding of sanctions against the plaintiff by the bankruptcy court, including attorney fees and costs incurred in having the case dismissed.

It should be noted that the COVID-19 crisis has had no effect on the need for obtaining leave of the bankruptcy court before filing suit against the bankruptcy trustee or the trustee's counsel. However, there is a caveat: parties wishing to obtain the bankruptcy court's leave in the Eastern District of Michigan, Southern Division (Detroit) that do not have the ability to electronically file a motion for leave through CM/ECF must file a motion for leave by mail through the Eastern District of Michigan, Northern Division (Flint); the Detroit bankruptcy court clerk's office is currently not receiving any pleadings. ■

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ENDNOTES

1. *Barton v Barbour*, 104 US 126, 141; 26 L Ed 672 (1881).
2. *Id.* at 126–127.
3. *Davis v Gray*, 83 US 203; 21 L Ed 447 (1872).
4. *Barton*, 104 US at 127.
5. *Davis*, 83 US at 213–215.
6. *Id.* at 217–218.
7. *Barton*, 104 US at 128–129.
8. *Id.* at 136–137.
9. *Vass v Conron Bros Co*, 59 F2d 969, 970 (CA 2, 1932).
10. *Cappuccilli v Lewis*, unpublished opinion of the United States Court of Appeals for the Sixth Circuit, issued November 10 (Case No. 10-11690), p 5 (citing *In re Triple S. Restaurants, Inc*, 519 F3d 575, 578 (CA 6, 2008)).
11. *In re DeLorean Motor Co*, 991 F2d 1236, 1241 (CA 6, 1993). See also *In re Lowenbraun*, 453 F3d 314, 321 (CA 6, 2006).
12. *DeLorean*, 991 F2d at 1241.
13. *Id.*
14. *Barton*, 104 US at 128–129.
15. *In re VistaCare Group, LLC*, 678 F3d 218, 224 (CA 3, 2012) (citing *Barton*, 104 US at 128).
16. *Id.* at 224–225.
17. *Id.* at 225.
18. *McNulta v Lochridge*, 141 US 327, 380; 12 S Ct 11; 35 L Ed 796 (1891).
19. *In re Linton*, 136 F3d 544, 545 (CA 7, 1988) (citations omitted).
20. See, e.g., *Porter v Sabin*, 149 US 473, 478–480; 13 S Ct 1008; 37 L Ed 815 (1893); *Merryweather v United States*, 12 F2d 407, 408 (CA 9, 1926); and *Vass v Conron Bros Co*, 59 F2d 969, 970–971 (CA 2, 1932).
21. *Porter*, 149 US at 479.
22. *Id.*
23. *In re VistaCare*, 678 F3d at 229.
24. *Id.*
25. *Id.* at 229–230.
26. *Id.* (quoting *In re Linton*, 126 F3d at 545 and noting that trustees would likely have to pay higher malpractice premiums).
27. *In re VistaCare*, 678 F3d at 230.