



Failure to Disclose Discrimination Claim Bars Employee From Suing Employer

Insights

2.06.03

Newspapers headlines scream "EPIDEMIC" and breathlessly report that 1.5 million Americans were plagued by it last year alone. What is this outbreak? It is personal bankruptcy. Is there any good news to be found? For Corporate America, the good news is that individuals who fail to disclose their potential or pending civil rights claims as a potential asset in their bankruptcy proceedings will be barred from suing their employers.

The 11th U.S. Circuit Court of Appeals ruled on February 18, 2003, that an individual who does not disclose his potential discrimination claims against his former employer, will be judicially estopped from suing that employer. *DeLeon v. Comcar Indus. Inc.*, F.3d. (11th Cir. 2003), 2003 WL 347643 (11th Cir. Feb. 19, 2003).

The decision has widespread impact for corporate defendants, who may be able to use this precedent to win numerous lawsuits filed by aggrieved employees. The rationale of the decision could be used by corporations to bar undisclosed claims of discrimination, retaliation, failure to provide accommodations, or of a hostile work environment. In fact, any undisclosed claim for monetary damages by an aggrieved employee could be barred. Several lower federal courts have already dismissed claims filed by employees who failed to disclose their claims in bankruptcy. *Lott v. Sally Beauty Co.*, 2002 W 533651 (M.D. Fla. 2002) (dismissing an employee's claims of unlawful sexual harassment, including an alleged sexual assault); *Chandler v. Samford University*, 35 F. Supp.2d 861 (N.D. Ala. 1999) (dismissing an employee's claims of racial harassment).

The decision marks the first time the 11th Circuit has applied the doctrine of judicial estoppel to discrimination claims undisclosed in Chapter 13 bankruptcy cases. The Court previously had applied this rule to Chapter 7 bankruptcy cases, but in *DeLeon*, the Court held that debtors have an a motive to conceal assets in both Chapter 13 and Chapter 11 bankruptcies. Therefore, the Court held that the failure to disclose potential discrimination claims as an asset in either type of proceeding will result in the debtor being barred from suing his employer for unlawful workplace discrimination.

Judicial estoppel is an equitable concept, invoked at a court's discretion, to prevent abuse of the judicial process. Under this doctrine, a litigant is precluded from asserting a claim in a legal proceeding that is inconsistent with a position taken or claim made by that party in a previous proceeding. The purpose of the doctrine "is to protect the integrity of the judicial process by

proceeding. The purpose of the doctrine is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire v. Maine*, 523 U.S. 742, 749-50 (2001). Because the doctrine of judicial estoppel is designed to protect the integrity of the judicial system, the 11th Circuit has held that it does not matter that the employer is not a party to the debtor's bankruptcy proceeding. Similarly, the 11th Circuit has held that it does not matter that the employer is not prejudiced by the debtor's failure to disclose his discrimination claim in his bankruptcy proceeding. The Court held that in order to prevent debtors from "making a mockery of the judicial system," debtors who fail, for any reason, to disclose their civil rights claims in their bankruptcy will be judicially estopped from suing their employers.

The 11th Circuit has held that even civil rights claims that arise after the filing of the bankruptcy petition will be barred if the debtor fails to amend his bankruptcy petition. In addition, the 11th Circuit has held that both lawsuits and charges pending before the Equal Employment Opportunity Commission, must be disclosed by the debtor or they will be barred.

A critical aspect of the 11th Circuit's holding is that the debtor who fails to disclose his discrimination claims is barred from suing his employer regardless of the debtor's intent. Specifically, the Court held it does not matter if the debtor inadvertently failed to disclose his discrimination claim or if his failure is due to reliance on advice received from his bankruptcy attorney. No specific intent to defraud is required. The Court held: "Because [the debtor] certainly knew about his claim and possessed a motive to conceal it because his amount of repayment would be less, we can infer from the record his intent to make a mockery of the judicial system." 2003 WL 347643 at *2 (Citations omitted).

When a debtor files for bankruptcy he must file, under oath, a document listing all of his assets or potential assets. The debtor also is required to amend this document when he acquires new assets or potential assets. When the debtor fails to disclose a discrimination claim against his employer, he misleads creditors as to the true value of his estate, which can cause creditors to accept less money. As a result, the 11th Circuit has held that all debtors have a motive to conceal potential discrimination claims. Therefore, the Court held that any debtor who fails to disclose a potential discrimination claim will be judicially estopped from suing his employer on that claim.

The only exception to this broad ruling is that the 11th Circuit will allow debtors to maintain claims for injunctive relief against their former employers. Because the failure to disclose a claim for injunctive relief would have no impact whatsoever on the value of the debtor's estate, the Court found there is no motive to hide these claims. As a result, the Court held that undisclosed claims for injunctive relief will not be barred. *Burnes*, 291 F.3d at 1289.

Related People





Charles S. Caulkins

Partner

954.847.4700

Email