DOCKET NO.: HHB-CV20-5028224-S	:	SUPERIOR COURT
JOANNE M. WILLIAMS	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	AT NEW BRITAIN
AARON W. SARRA AKA AARON W. SARRA, LLC., ET AL.	:	APRIL 29, 2024

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DOCKET NO.: HHB-CV21-5028822-S	:	SUPERIOR COURT
JOANNE M. WILLIAMS	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	AT NEW BRITAIN
LAW OFFICE OF AARON W. SARRA, LLC, ET AL.	:	APRIL 29, 2024

MEMORANDUM OF DECISION

The defendants Deanna Sarra, executrix of the estate of Aaron W. Sarra and the Law Office of Aaron W. Sarra, LLC filed motions to dismiss, in the above-referenced consolidated actions,[1] the plaintiff's one count complaints in their entirety for lack of subject matter jurisdiction on the grounds that the plaintiff lacks standing and is judicially estopped from maintaining the actions.

JDNO sent to all parties, at:

Judicial District of New Britain
SUPERIOR COURT
FILED

APR 29 2024

ASSISTANT CLERK

Andrea Lapo, Stamford CT and Ryan Ryan Deluca, Bridgeport CT.
by S.Petrosky/AC on 4-29-24

[1] The memorandum of decision is filed in both actions.

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FACTS

These consolidated actions arise out of essentially the same set of factual allegations; the difference between the two suits is the defendants. The two actions allege a breach of contract in the rendering of professional services, namely defense of a foreclosure action, by Attorney Aaron Sarra on behalf of the plaintiff.[2] The first action was originally brought against Attorney Aaron W. Sarra, individually (hereafter "the first action"). *Williams* v. *Sarra*, docket no. CV-20-5028224-S. After Attorney Sarra's death, Deanna Sarra, executrix of the estate of Aaron W. Sarra was substituted as a party. The second action was brought, after the death of Attorney Sarra, against the Law Office of Aaron W. Sarra, LLC and Jane Doe, as executrix (hereafter "the second action"). *Williams* v. *Law Office of Aaron W. Sarra, LLC*, docket no. CV-21-5028822-S.[3] The defendants, Deanna Sarra, executrix of the estate of Aaron W. Sarra and the Law Office of Aaron W. Sarra will be referred to collectively as "the defendants" or "Attorney Sarra." The first and second actions were consolidated on July 19, 2021. Since the actions are consolidated, the plaintiff's allegations are virtually identical in both actions and the motions to dismiss, the objection thereto, and the reply thereafter are identical, the court will address the pending motions to dismiss and objection thereto together.

The amended complaint in the first action alleges that on May 13, 2013, the plaintiff entered into a contract with the defendants to represent her in a foreclosure action. The plaintiff alleges that the defendants promised that discovery would be conducted to "ascertain that the

[2] The plaintiff originally alleged a second count in her complaint in both actions for unjust enrichment. In both actions, the plaintiff withdrew the second count.

[3] There was no Jane Doe, executrix of the estate. The plaintiff apparently anticipated the appointment of an executrix, as Attorney Sarra was deceased at this time. The plaintiff withdrew the complaint against Jane Doe. HHB-CV-5028822-S, Entry No. 108.

plaintiff's dad's mortgage was paid off before [the plaintiff] assumed it in order to reduce the amount of the debt which could result in her not losing her home in the foreclosure case." The plaintiff alleges she had many conversations with Attorney Sarra throughout 2013, 2014, and 2015, about obtaining evidence of the payoff. During July of 2015, the plaintiff alleges that the defendants promised her that they would object to the affidavit of debt and attempt to postpone the foreclosure judgment motion and request an evidentiary hearing. The plaintiff alleges that she told the court in the foreclosure proceeding on July 13, 2015, that she believed a mortgage between her father and Countrywide Homes was paid off. The court allowed the plaintiff time to file the necessary papers to contest the affidavit of debt and the foreclosure. The plaintiff alleges, that upon information and belief, the defendants never requested discovery from the foreclosing bank to obtain evidence to reduce the debt and the defendants instead attempted to steer the plaintiff towards doing a short sale. The plaintiff claims that defendant's "refusal" [to file the necessary papers] was a breach of contract. Accordingly, the plaintiff alleges that had the payoff issue been resolved, she would not have lost her home. The second lawsuit contains essentially the same substantive allegations as the first action.

The motion to dismiss is further supported by exhibits, which are not in dispute, relevant to the plaintiff's bankruptcy proceedings in 2015, 2017 and 2019. While the foreclosure action was pending, the plaintiff filed three bankruptcy actions in the U.S. Bankruptcy Court for the District of Hartford. *In re Williams*, No. 15-22095 (Bankr. D. Conn. 2015); *In re Williams*, No. 17-21846 (Bankr. D. Conn. 2017) (Ch. 13 Voluntary Petition). In the third bankruptcy petition, which was filed on September 18, 2019, under Chapter 7, the plaintiff filed a Schedule A/B but

did not disclose any claim against Attorney Sarra or his law firm. *In re Williams*, No. 19-21607 (Bankr. D. Conn. 2019).

The first action against Attorney Sarra was commenced on October 20, 2020, (first action, Entry No. 100.03) and the second action was commenced on February 12, 2021 (second action, Entry No. 100.03). The plaintiff did not amend the Schedule A/B in the third bankruptcy action and the Final Decree entered on March 3, 2021. The plaintiff did not dispute these bankruptcy proceedings in the opposition to motion to dismiss.

The defendants filed motions to dismiss in both actions for lack of subject matter jurisdiction and a memorandum of law in support of the motions on January 31, 2024. The plaintiff filed an objection to the motion to dismiss in the second action only on February 14, 2024. At oral argument on the motion to dismiss on March 25, 2024, the court (Knox, J.) allowed the objection filed in the second action to be considered in the first action as well. On February 29, 2024, the defendants filed a reply to the plaintiff's objection. The court heard oral argument on the motions to dismiss on March 25, 2024.

DISCUSSION

"[A] motion to dismiss pursuant to Practice Book § 10-30 (a) (1) is the appropriate procedure for challenging subject matter jurisdiction." *Machado* v. *Taylor*, 326 Conn. 396, 401, 163 A.3d 558 (2017). "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction. . . . The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or

by the court sua sponte, at any stage of the proceedings. . . ." *Keller* v. *Beckenstein*, 305 Conn. 523, 531-32, 46 A.3d 102 (2012).

"Trial courts addressing motions to dismiss for lack of subject matter jurisdiction . . . may encounter different situations, depending on the status of the record in the case. . . . [L]ack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. . . . Different rules and procedures will apply, depending on the state of the record at the time the motion is filed." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Conboy* v. *State*, 292 Conn. 642, 650-51, 974 A.2d 669 (2009).

"When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) Id., 651.

"In contrast, if the complaint is supplemented by *undisputed facts* established by affidavits submitted in support of the motion to dismiss . . . other types of undisputed evidence . . . and/or public records of which judicial notice may be taken . . . the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. . . . Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]. . . . If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss

conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits . . . or other evidence, the trial court may dismiss the action without further proceedings." (Citations omitted; emphasis in original; footnote omitted; internal quotation marks omitted.) Id., 651-52.

The defendants contend that the plaintiff lacks standing to maintain the consolidated actions because the plaintiff most recently filed for chapter 7 bankruptcy relief in 2019 and failed to list the claims in the present consolidated actions on her schedule of assets. The defendants argue that because the claims were unscheduled and arose out of events that occurred before the plaintiff filed for bankruptcy, the claims alleged in the consolidated actions belong to the bankruptcy estate, therefore the plaintiff lacks standing to maintain the actions. In response, the plaintiff argues that she has full ownership, dominion, and control over the prosecution of the consolidated actions with the exception of the first $50,000 which belong to the 2019 bankruptcy estate.

"The issue of standing implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss. . . . [I]t is the burden of the party who seeks the exercise of jurisdiction in [her] favor . . . clearly to allege facts demonstrating that [she] is a proper party to invoke judicial resolution of the dispute. . . . It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Assoc. Resources, Inc.* v. *Wall*, 298 Conn. 145, 164, 2 A.3d 873 (2010).

"Commencement of a bankruptcy proceeding creates an estate that comprises all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541

(a) (1). The debtor must file a formal statement with the Bankruptcy Court including a schedule of his or her assets and liabilities. See 11 U.S.C. § 521 (a) (1) (B) (i). The assets, which become the property of the bankruptcy estate, include all causes of action belonging to the debtor that accrued prior to the filing of the bankruptcy petition. See, e.g., *In re Jackson*, 593 F.3d 171, 176 (2d Cir.2010). A cause of action becomes a part of the bankruptcy estate even if the debtor fails to schedule the claim in his petition. See, e.g., *Rosenshein* v. *Kleban*, 918 F.Supp. 98, 103 (S.D.N.Y.1996). Property that is scheduled pursuant to 11 U.S.C. § 521 (1), but not administered by the plan, is abandoned to the debtor by operation of law at the close of the bankruptcy case. See 11 U.S.C. § 554 (c). By contrast, property that is not formally scheduled is not abandoned and therefore remains part of the estate. See 11 U.S.C. § 554 (d)[.] [*Rosenshein* v. *Kleban*, supra, 102–103]. Courts have held that because an unscheduled claim remains the property of the bankruptcy estate, the debtor lacks standing to pursue the claims after emerging from bankruptcy, and the claims must be dismissed." (Internal quotation marks omitted.) *Assoc. Resources, Inc.* v. *Wall*, supra, 298 Conn. 164-65.

Here, the plaintiff's breach of contract claims against the defendants accrued prior to the plaintiff's chapter 7 bankruptcy filing in 2019 as evidenced by the plaintiff's allegations in her complaints in the present consolidated actions. The plaintiff alleges that she entered into a contract with the defendants for legal services on or about May 31, 2013. The plaintiff further alleges that she had conversations with the defendants throughout 2013, 2014, and 2015, regarding obtaining evidence of the mortgage payoff. As a result of the defendants' failure to obtain evidence of the payoff, the plaintiff alleges, the defendants breached the contract for the

legal services. The record reveals the following additional undisputed facts.[4] The plaintiff filed for bankruptcy protection three times with the most recent filing being for chapter 7 relief under the United States Bankruptcy Code on September 18, 2019. On the plaintiff's schedule of assets in the 2019 bankruptcy proceeding, she did not list any claims against the defendants Attorney Aaron W. Sarra or the Law Office of Aaron W. Sarra, LLC.

Applying these principles of bankruptcy law, when the plaintiff filed for bankruptcy most recently in 2019, a bankruptcy estate was created and her claims against the defendants in these consolidated actions became property of the bankruptcy estate even though the plaintiff did not list her claims against the defendants on her schedule of assets. "The outcome of failing to schedule a claim with the bankruptcy court is clear when the Bankruptcy Court has closed the bankruptcy case. If the outcome of the bankruptcy case is a discharge or its functional equivalent, then an unscheduled claim remains the property of the bankruptcy estate, the debtor lacks standing to pursue the claims after emerging from bankruptcy, and the claim must be dismissed[.]" (Internal quotation marks omitted.) *Gianopoulos* v. *West Park Stamford, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-09-5009827-S (December 4, 2015, *Lee, J.*); *Fortier* v. *White Flower Farms, Inc.*, Superior Court, judicial district of Litchfield, Docket No. CV–14–6010958–S (November 21, 2014, *Marano, J*) (59 Conn. L. Rptr. 331). When the plaintiff's bankruptcy estate was closed in March of 2021, by "Standard Discharge" the plaintiff's unscheduled claims against the defendants remained part of the bankruptcy estate. Therefore, the plaintiff lacks standing to bring the present consolidated actions

[4] The plaintiff did not object to the evidence presented of the bankruptcy filings, and the court may take judicial notice of the filings in the bankruptcy proceedings. *Elwell* v. *Kellogg*, 220 Conn. App. 822, 828 and n.6, 299 A.3d 1166, cert. denied, 348 Conn. 927, 304 A.3d 861 (2023) (taking judicial notice of the record in the bankruptcy proceeding because it provided context for the action).

and the actions must be dismissed. Because the lack of standing is an appropriate basis for granting a motion to dismiss, *Assoc. Resources, Inc.* v. *Wall*, supra, 298 Conn. 164, it is not necessary for the court to consider the defendants' second argument that the plaintiff is judicially estopped from prosecuting the consolidated cases.

Other superior courts which have considered motions to dismiss on similar grounds have concluded that the plaintiff lacked standing. See *Dana Investment Corp.* v. *Robinson & Cole*, Superior Court, judicial district of New Britain, Complex Litigation Docket, Docket No. X03-CV-00-0505126-S (March 8, 2001, *Aurigemma, J.*) ("[the p]laintiff . . . lacks standing to sue the defendants, because the claims alleged in the complaint are not [the plaintiff's] to assert. While [the plaintiff] owned the claims when they supposedly arose . . . [the plaintiff] surrendered that ownership to the [bankruptcy estate], a separate legal entity, when it filed for bankruptcy"); *Gianopoulos* v. *West Park Stamford, LLC*, supra, Superior Court, Docket No. CV-09-5009827-S ("[b]ecause the plaintiff did not include this pre-petition claim in his bankruptcy schedule, and the bankruptcy proceeding is closed, the claim is the property of the bankruptcy estate").

The plaintiff cites no legal authority in her objection to the motions to dismiss.[5] The plaintiff has the burden of proving standing. *Manning* v. *Feltman*, 149 Conn. App. 224, 235, 91 A.3d 446 (2014). Rather, the plaintiff contends that she "has full ownership, dominion and control over prosecution of this action with the exception of the first fifty thousand dollars . . . which belongs to the bankruptcy estate of her 2019 bankruptcy case." The plaintiff's reliance on a bankruptcy decree applicable to another party, not the defendants in the present cases is

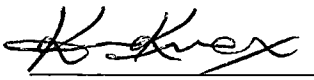
[5] / At the hearing, in the absence of any legal authority or analysis in the objection to the motion to dismiss, the court inquired as to what authority if any the plaintiff was relying upon in support of standing. The plaintiff replied, through counsel, that she was relying on the order of the bankruptcy court, dated July 16, 2020, as discussed infra.

unpersuasive. The plaintiff relies on order of the United States Bankruptcy Court for the District of Connecticut (hereafter "bankruptcy court"), dated July 16, 2020.[6] In the order, the bankruptcy court granted the trustee's motion to compromise claim, ordering "that the Debtor's bankruptcy estate's rights, title and interests in the cause of action captioned 'Williams, *et al* v. Countrywide Bank, FSB' . . . *now pending in the United States District Court for the District of Connecticut*, with the below-noted exceptions, is assigned and transferred, in full, to Joanne Marie Williams[.]" (Emphasis added.) The plaintiff misconstrues the order of the bankruptcy court, which only granted her full ownership, dominion, and control over the prosecution of her interest in *Williams* v. *Countrywide Bank, FSB*, United States District Court, Docket No. 3:18-cv-2007 (VAB) (D. Conn.). The plaintiff provides no legal analysis or authority that the aforementioned bankruptcy order provides standing in this action. The bankruptcy court order did not release the claims against the defendants in the present consolidated actions to the plaintiff and does not address the plaintiff's standing in the present action. As such, the plaintiff has not presented the court with any authority or analysis in support of standing. See *Manning* v. *Feltman*, supra, 149 Conn. App. 235 ("the plaintiff bears the burden of establishing standing. . . . Unless the Bankruptcy Court orders otherwise, property of the [bankruptcy] estate that is not abandoned and not administered in a case remains the property of the estate").

[6] The order was admitted as an exhibit, without objection, at the hearing. It was exhibit three of the defendants' reply brief (docket entry no. 161.00 in the first action & docket entry no. 151.00 in the second action).

CONCLUSION

For all the foregoing reasons, the defendants' motion to dismiss for lack of subject matter jurisdiction on the grounds of standing is granted.



Knox, J.