

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Elizabeth E. Brown

In re:

BEARCAT ENERGY LLC,

Debtor.

Bankruptcy Case No. 17-12011 EEB

Chapter 11

JEFFREY A. WEINMAN, chapter 11
trustee,

Plaintiff,

v.

CORDES & COMPANY,

Defendant.

Adversary Proceeding No. 19-1083 EEB

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

THIS MATTER is before the Court on the Motion to Dismiss filed by the Defendant Cordes & Company ("Cordes"). The Trustee has sued Cordes to recover payments it received for its services as a court-appointed special master in the divorce proceedings between Bearcat's principal, John Edwards, and his former spouse. Bearcat paid for these services, despite the fact that it was not a party to the divorce proceeding. In its motion, Cordes requests dismissal based on the Barton doctrine, a principle of federal common law that requires a litigant to obtain permission from the court that appointed a receiver before he may sue the receiver in a different court. If the Barton doctrine applies and the plaintiff has not obtained prior permission from the appointing court, the court where the suit is brought lacks subject matter jurisdiction and must dismiss the case. However, the Court concludes that the Barton doctrine does not apply to this action and, therefore, it denies Cordes' Motion to Dismiss.

I. LEGAL STANDARDS AND BACKGROUND

Rule 12(b)(1) allows a court to dismiss a complaint for lack of subject matter jurisdiction. Dismissal under Rule 12(b)(1) is not a judgment on the merits of a plaintiff's case. Rather, it calls for a determination that the court lacks authority to adjudicate the matter, attacking the existence of jurisdiction rather than the allegations of the

complaint. See *Castaneda v. INS*, 23 F.3d 1576, 1580 (10th Cir. 1994). A court lacking subject matter jurisdiction “must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking.” *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974). The dismissal is without prejudice. *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006).

When considering a Rule 12(b)(1) motion, a court may consider matters outside the pleadings without transforming the motion into one for summary judgment. *Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995). Where a party challenges the facts upon which subject matter jurisdiction depends, the court “may not presume the truthfulness of the complaint's factual allegations . . . [and] has wide discretion to allow affidavits, other documents, and [may even hold] a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1).” *Id.* See also *Davis ex rel. Davis v. United States.*, 343 F.3d 1282, 1296 (10th Cir. 2003).

In this case, the facts relevant to a determination of the doctrine’s applicability are undisputed. On September 15, 2016, the District Court of Denver County Colorado appointed Cordes as a “Replacement Special Master” in divorce proceedings between Mr. Edwards and his former spouse. Bearcat transferred \$17,868 to Cordes within one year prior to Bearcat’s chapter 11 bankruptcy filing to pay professional fees Cordes incurred as the special master. The Trustee seeks to avoid these payments as either preferential transfers or fraudulent conveyances. He also asserts claims for unjust enrichment, an accounting, and declaratory relief, all related to the allegedly avoidable payments.

Cordes attached to its Motion copies of the divorce court’s orders governing its appointment as a special master. They reflect that Mr. Edwards’ former spouse was concerned about Mr. Edwards’ use of proceeds from the sale of an unrelated business to pay Bearcat’s debts. To assuage these concerns, the parties agreed to request a special master to oversee, review, and approve certain Bearcat expenditures and transactions and to provide reports to the divorce court on a regular basis. These are the services that Cordes provided. The divorce case is now closed.

II. DISCUSSION

Though courts sometimes confuse the Barton doctrine with concepts of judicial or quasi-judicial immunity, the doctrine is actually only procedural in nature. *In re Christensen*, 598 B.R. 659, 664 (Bankr. D. Utah 2019). It does not shield receivers or other court-appointed officials from suit, but only directs where a party must file a lawsuit against such an official. *Id.* at 665. The Barton doctrine strips all courts except the appointing court of subject matter jurisdiction to entertain a lawsuit against the official, unless the appointing court gives its permission to allow a suit elsewhere. *Id.*

The doctrine draws its name from the Supreme Court’s decision in *Barton v. Barbour*, 104 U.S. 126 (1881), in which a woman injured in a railroad accident sued the railroad’s state court receiver for negligence. The receiver sought dismissal of the lawsuit on the ground that the plaintiff did not seek leave of the court that appointed him

as receiver before filing her negligence suit against him in a different court. The court cited its prior decision in *Davis v. Gray*, 83 U.S. 203, 218 (1877) as authority for the “general rule that before suit is brought against a receiver, leave of the court by which [the receiver] was appointed must be obtained.” *Barton*, 104 U.S. at 128. In the *Davis* opinion, the Supreme Court articulated the general principle as follows:

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.

Davis v. Gray, 83 U.S. at 218.

The *Barton* court reasoned that the rule was necessary to prevent claimants from obtaining “some advantage over the other claimants upon the assets in the receiver’s hands.” *Barton*, 104 U.S. at 128. The court explained that, to allow a party to sue a receiver without leave, “would be to allow the charges and expenses of the administration of a trust property in the hands of a court of equity to be controlled by other courts, at the instance of impatient suitors, without regard to the equities of other claimants, and to permit the trust property to be wasted in the costs of unnecessary litigation.” *Id.* at 130. It would “[usurp] the power and duties which belonged exclusively to another court.” *Id.* at 136. The court held that the federal district court in which *Barton* filed her suit lacked jurisdiction to entertain her tort claim unless and until she obtained leave from the state court that had appointed the receiver. *Id.* at 136-37.

Over the years, federal courts have extended the protection of the *Barton* doctrine to bankruptcy trustees, reasoning that a bankruptcy trustee is the “statutory successor to the equity receiver,” who is “working in effect for the court that appointed or approved him, administering property that has come under the court’s control by virtue of the Bankruptcy Code.” *In re Linton*, 136 F.3d 544, 545 (7th Cir. 1998). In *Satterfield v. Malloy*, 700 F.3d 1231, 1234-35 (10th Cir. 2012), the Tenth Circuit held that the doctrine “precludes suit against a bankruptcy trustee for claims based on alleged misconduct in the discharge of a trustee’s official duties absent approval from the appointing bankruptcy court.” In addition to trustees, courts have extended the *Barton* doctrine to other court-appointed officials and fiduciaries, including trustee’s counsel, real estate brokers, and accountants. See, e.g., *Lankford v. Wagner*, 853 F.3d 1119, 1122 (10th Cir. 2017) (trustee’s counsel); *Falck Properties, LLC v. Walnut Capital Real Estate Servs., Inc. (In re Brownsville Property Corp., Inc.)*, 473 B.R. 89, 91-92 (Bankr. W.D. Pa. 2012) (real estate brokers); *In re W.B. Care Center, LLC*, 497 B.R. 604, 611 (Bankr. S.D. Fla. 2013) (accountants). Though courts now apply the doctrine most frequently in the context of suits against bankruptcy trustees and other bankruptcy court-appointed officials, the doctrine remains applicable in cases involving state court receiverships. See, e.g., *Teton Millwork Sales v. Schlossberg*, 311 Fed. Appx. 145, 2009 WL 323141 (10th Cir. Feb. 10, 2009) (unpublished opinion) (applying doctrine and

ultra vires exception to doctrine); *Seaman Paper Co. of Massachusetts, Inc. v. Polsky*, 537 F. Supp 2d 233, 236 (D. Mass 2007).

When the Supreme Court adopted the Barton doctrine, it did so to protect receivership estates from interference, to foster the equitable distribution of receivership assets among all claimants, and to prevent the receivership property from waste caused by unnecessary litigation. *Barton*, 104 U.S. at 128-130. Over the years, courts have recognized other important interests the doctrine fosters -- interests that continue even after the closing of a particular bankruptcy or receivership case. In an often-quoted passage, the Seventh Circuit described the following additional policies behind the Barton doctrine:

Without the requirement [to obtain leave of the appointing court], 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 (and the expense of bankruptcy is already a source of considerable concern). Furthermore, requiring that leave to sue be sought enables bankruptcy judges to monitor the work of the trustees more effectively. It does this by compelling suits growing out of that work to be as if they were prefiled before the bankruptcy judge that made the appointment; this helps the judge decide whether to approve this trustee in a subsequent case.

In re Linton, 136 F.3d at 545.

The *Linton* court also noted that the Barton doctrine serves to promote “the integrity of bankruptcy jurisdiction” because

[i]f debtors, creditors, defendants in adversary proceedings, and other parties to a bankruptcy proceeding could sue the trustee in state court for damages arising out of the conduct of the proceeding, that court would have the practical power to turn bankruptcy losers into bankruptcy winners, and vice versa. A creditor who had gotten nothing in the bankruptcy proceeding might sue the trustee for negligence in failing to maximize the assets available to creditors, or to the particular creditor. A debtor who had failed to obtain a discharge might through a suit against the trustee obtain the funds necessary to pay the debt that had not been discharged.

Id. at 546.

While the *Linton* court spoke in terms of trustees and bankruptcy court jurisdiction, other courts have applied these same principles in cases involving state court receiverships and other court-appointed officials. For example, in *Bertsch v. Eighth Judicial Dist. Court*, 396 P.3d 769 (Nev. 2017), the court ruled that the Barton doctrine barred a suit by a litigant against a court-appointed special master, finding that the purposes of the doctrine (preventing dissatisfied parties from freely suing trustees

for discretionary decisions made while performing their court-derived duties, preventing disincentives for performing a trustee's necessary duties, and keeping trustees from being burdened with unnecessary or frivolous litigation in distant forums), were equally applicable to other court-appointed officials *Id.* at 773 (citing *In re Ridley Owens, Inc.*, 391 B.R. 867, 871-72 (Bankr. N.D. Fla. 2008)). The *Bertsch* court held that "an individual must seek leave of the appointing court when suing a court-appointed special master in a non-appointing court for actions taken within the scope of the court-derived authority." *Id.* at 774.

There are two exceptions to the Barton doctrine, neither of which is applicable here. The first exception is codified at 28 U.S.C. § 959(a). That statute provides that, "[t]rustees, receivers or managers of any property, including debtors in possession, 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." This provision is "intended to permit actions redressing torts committed in furtherance of the debtor's business, such as the common situation of a negligence claim in a slip and fall case where a bankruptcy trustee, for example, conducted a retail store." *Satterfield v. Malloy*, 700 F.3d at 1237 (quoting *Carter v. Rodgers*, 220 F.3d 1249, 1254 (11th Cir. 2000)). It is clearly inapplicable here as Cordes did not operate Bearcat's business or any other business that was an asset of the parties in the divorce case. Nor are the Trustee's claims based in any way on the operation of any business.

The second exception is the *ultra vires* exception. It applies when the actions of trustees or receivers exceed the scope of their official duties. Courts have applied this exception when a trustee or receiver "wrongfully seizes possession of a third party's assets." *In re Christensen*, 598 B.R. at 665-66 (quoting *Satterfield v. Malloy*, 700 F.3d at 1235). There is no suggestion in the Trustee's complaint of either wrongful seizure of property or that Cordes in any way acted outside the scope of its official duties.

Despite the fact that the Barton doctrine applies to special masters and that neither of the exceptions to the doctrine applies in this case, the doctrine does not apply to the types of claims asserted by the Trustee. According to the Tenth Circuit, the Barton doctrine applies to "claims based on alleged misconduct in the discharge of a [court-appointed official's] official duties," *Satterfield v. Malloy*, 700 F.3d at 1234-35, or "claims based on acts that are related to the official duties of the trustee." *Id.* at 1236. The *Satterfield* court directed that "courts applying the Barton doctrine must look to the substantive allegations to determine whether a claim is related to the trustee's bankruptcy duties." *Id.*

Here, the Trustee's claims have nothing to do with Cordes' actions or inactions in performing its duties. The allegations do not involve the manner in which Cordes oversaw, reviewed, or approved of Bearcat's expenditures and transactions. They have nothing to do with its reports or a failure to report to the divorce court on a regular basis. Instead the claims center on the timing of the payments received, Bearcat's financial condition, and whether Bearcat received consideration for the payments. The parties have not directed the Court to, nor has the Court been able to find, any case where the Barton doctrine applied to a suit unrelated to the court-appointed official's performance

of its duties. More specifically, none involved a trustee's attempt to recover allegedly preferential or fraudulently conveyed payments to the official.

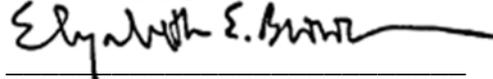
Moreover, the purposes behind the Barton doctrine are not jeopardized by this action. Since the divorce case is now closed, the doctrine's concerns over forum shopping, interference with, and usurpation of the powers of the divorce court are not present. The Trustee's suit will not affect the equitable division of Mr. Edwards' and his former spouses' marital property. His suit is not an attempt to obtain an advantage over the parties in the divorce case. It is not an attempt to harass or extort Cordes in the performance of its duties. If the Trustee proves successful in his attempts to recover the payments from Cordes, that might give it pause when considering future special master appointments, but no more so than any supplier, service provider, or professional that provides services to an insolvent entity or who receives payment from one and later has to disgorge the payments. Suits for the recovery of preferential or fraudulently transferred payments to a court-appointed official will not cause the officials to incur higher malpractice premiums or increase the costs of state court proceedings because the official will not be able to recoup its losses from either source. Because none of the purposes of the Barton doctrine would be furthered by applying it to this case, the Court declines to do so.

III. CONCLUSION

Based on the foregoing, the Court hereby ORDERS that Cordes' Motion to Dismiss is DENIED. The Defendant shall file an answer within fourteen days of this Order.

DATED this 13th day of March, 2020.

BY THE COURT:



Elizabeth E. Brown, Bankruptcy Judge