UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:
WILEY BAILEY
Debtor.

Case No. 09-33042 PJD
Chapter 13

THE ESTATE OF WILEY BAILEY
VANDELLA BAILEY RICHMOND,
Administrator, and BARBARA L. ROBINSON,

Plaintiffs,

v.

Adv. Proc. No. 14-00064

REGIONS BANK, WILMA TITUS, and
MARY WALLACE

Defendants.

ORDER ON PLAINTIFFS' MOTION TO REMAND AND
DEFENDANT REGIONS BANK'S MOTIONS FOR SUMMARY JUDGMENT AND
SANCTIONS

Before the court are the Motion for Summary Judgment, Motion for Sanctions and Objection to Motion to Remand filed by Regions Bank and Wilma Titus, an employee of Regions Bank (jointly referred to as "Bank"). Also before the court is the Motion to Remand filed by the Estate of Wiley Bailey, Vandella Bailey Richmond, Administrator, and Barbara Robinson, Beneficiary ("Plaintiffs"). These motions all arise out of Bank's removal of a Complaint filed by the Plaintiffs in the Probate Court of Tennessee for the 30th Judicial District at Memphis ("Probate Court Complaint"). The Probate Court Complaint alleges causes of action for negligence, breach of fiduciary duty and undue influence against Bank and Mary Wallace.[1] This court held a hearing on the motions on June 24, 2014, after which it ruled on the record, and announced that a Memorandum Opinion and Order would be entered by the court. For the reasons that follow, Bank's Motion for Summary Judgment is granted, and its Motion for Sanctions is denied. Plaintiffs' Motion to Remand is denied as to Bank, and granted as to Mary Wallace.

JURISDICTION

Jurisdiction over adversary proceedings arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Under the authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings under*

[1] Probate Court counsel for Mary Wallace appeared at the hearing, but announced on the record that he was not representing Mary Wallace in the bankruptcy proceeding, and would take no part in the hearing.

the Bankruptcy Amendment Act of 1984, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). Underlying the motions before the court is a Probate Court Complaint in which Plaintiffs have brought causes of action against a party with whom the Chapter 13 Trustee ("Trustee") has already entered into a bankruptcy court-approved settlement agreement. The Probate Court Complaint alleges causes of action and seeks relief involving property of the bankruptcy estate for which this court has previously entered an order. The determination of matters concerning the administration of the bankruptcy estate and proceedings affecting the liquidation of the assets of the estate are core proceedings arising under the Bankruptcy Code. 28 U.S.C. § 157(b)(2)(A) and (O). A bankruptcy court's continuing jurisdiction to interpret its own orders, especially those in which the court expressly retained jurisdiction, is generally recognized in the case law. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 147-148 (2009), *In re Cano*, 410 B.R. 506, 546 (Bankr. S.D. Tex. 2009). This court determines this to be a core proceeding because the underlying action seeks to adjudicate property of the bankruptcy estate over which this court has already entered a final order. The court's interpretation of its own order regarding property of the bankruptcy estate falls within the language and intent of 28 U.S.C. § 157(b)(2)(A). If it is determined that this is not a core proceeding, then this court submits this as proposed findings of fact and conclusions of law.

FACTS

Wiley Bailey ("debtor") filed a voluntary Chapter 13 petition on November 19, 2009. In Schedule B of his petition, he scheduled a personal injury lawsuit, *Wiley Bailey v. Circle K Stores*, CT-003001-08, pending in the Circuit Court of Shelby County, Tennessee. The debtor

settled his personal injury lawsuit in December 2011 and received approximately $280,000. The debtor passed away the following month, on January 16, 2012.

On March 23, 2012, The Estate of Wiley Bailey filed an adversary proceeding against Mary Wallace and Regions Bank. The complaint was styled "Adversary Action for Sanction for Failure to Disclose Assets to Bankruptcy Court and Petition for Preliminary Injunction to Surrender Assets to Bankruptcy Trustee." (Adv. Proc. No. 12-000245). Plaintiffs filed an amended adversary complaint on March 28, 2013. Mr. TeShaun Moore was the attorney of record for the estate.

The bankruptcy court had no knowledge of a settlement in the debtor's personal injury lawsuit until the adversary proceeding was filed. The debtor did not seek approval to hire a personal injury attorney nor did he seek this court's approval of the personal injury settlement offer. [2]

On April 6, 2012, an Order was entered in the adversary proceeding styled "Order Granting Temporary Restraining Order and Adding George W. Stevenson, Chapter 13 Trustee, as Plaintiff." (Doc. No. 15). In this Order, this Court expressly found as follows:

> The Debtor's Chapter 13 plan was confirmed on January 29, 2010, and the Court's order confirming the plan provides that "[a]ll property shall remain property of the Chapter 13 estate under §§ 541(a) and 1306(a) and shall revest in the debtor(s) only upon discharge pursuant to § 1328(a), dismissal of the case, or specific order of the Court. The debtor(s) shall remain in possession of and in control of all property of the estate not transferred to the Trustee, and shall be responsible for the protection and preservation of all such

[2] Under §§ 323, 541 and 1306, the personal injury lawsuit was property of the bankruptcy estate, and the Chapter 13 Trustee was the proper party to pursue the litigation and settlement. Bankruptcy Rule 9019 requires the Trustee, after notice and a hearing, to seek the bankruptcy court's approval of the settlement.

> property, pending further orders of the Court." Order Confirming Plan ¶ 3. The Debtor's Chapter 13 case has not been dismissed nor discharged, and no order of this Court has revested in the Debtor the property of the bankruptcy estate. Therefore, all property, including the settlement proceeds and any proceeds thereof, remain property of the bankruptcy estate. Pursuant to 28 U.S.C. § 1334(e), this Bankruptcy Court has exclusive jurisdiction over all property of the bankruptcy estate,
> wherever located.

(Adv. Proc. Doc. No. 15, pp. 2-3).

The Court also held that the Trustee was the proper plaintiff in this adversary proceeding, finding:

> Further, Bankruptcy Rule 6009 provides that the Chapter 13 trustee may prosecute any action on behalf of the estate, and Bankruptcy Rule 323 also gives the trustee the capacity to sue. To that end, Mr. George W. Stevenson, as the Chapter 13 trustee assigned to Mr. Bailey's bankruptcy case, shall be added as a Plaintiff in this action. *See Cottrell v. Schilling (In re Cottrell),* 876 F.2d 540 (6th Cir. 1989). Inasmuch as this adversary proceeding seeks to recover property of the bankruptcy estate, the Court further determines that no security shall be required.

(Adv. Proc. Doc. No. 15, pp. 5-6).

At his request, Mr. TeShaun Moore, the attorney for the estate, was employed as the attorney for the Trustee.

On April 11, 2012, Defendant Mary Wallace was served with the Amended Complaint. On February 4, 2013, Defendant Bank filed a Motion to Dismiss for lack of proper service.

On February 11, 2013, Plaintiff filed a second amended complaint that asserted claims against Bank. This second amended complaint was served on Defendant Bank on February 29, 2013.

On June 19, 2013, an agreed order was entered allowing Mr. TeShaun Moore to

withdraw as counsel for the Trustee.

Shortly after the scheduled hearing on the Motion to Dismiss, this Court referred the parties to Chief Judge David S. Kennedy for a settlement conference. Several sessions were conducted by Judge Kennedy and the settlement conferences resulted in the September 17, 2013 Order Approving Compromise and Settlement. Defendant Mary Wallace did not participate in the settlement and is not a party thereto.

The Settlement Order provides, in part, that:

> 15. Effective upon the delivery of the Adversary Settlement Amount, Plaintiff releases and discharges Defendants, and its and their past, present, and future employees, stockholders, officers, directors, partners, agents, brokers, contractors, servants, affiliates, subsidiaries, parents, departments, divisions, insurers, predecessors, attorneys, successors and assigns (collectively in this paragraph, the "Released Parties"), and each of them, jointly and severally, from any and all claims or counterclaims, causes of action, remedies, damages, liabilities, debts, suits, demands, actions, costs, expenses, fees, controversies, setoffs, third party actions or proceedings of whatever kind or nature, whether at law, in equity, administrative, arbitral or otherwise, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, arising from or relating to the facts asserted in the Adversary Proceeding or any other claims or causes of action which were or could have been brought in the Adversary Proceeding, including, but not limited to, all claims or causes of action which in any way, directly or indirectly, or in any other way arise from or are in any way connected with (i) the Injury Claim; (ii) the Injury Settlement Proceeds; (iii) any other claim to the Injury Settlement Proceeds (or damages arising from the disposition of said funds); (iv) any claims which are, were or may be considered property of the Debtor's bankruptcy estate under either 11 U.S.C. §§ 541(a) and/or 1306; (v) the Adversary Proceeding; and (vi) any claims whatsoever existing under the provisions of title 11 of the United States Code, other applicable state or federal law and whether such claims are at law or are claims for equitable relief or damages, whether actual or punitive, sanctions, attorneys' fees, expenses and/or costs (collectively, the "Released Claims"). This Agreement is intended to resolve forever any and all claims that Plaintiff may now have, may have ever had or may in the future have against the

Released Parties.

* * *

16. Intention of the Parties. It is the intention of the Plaintiff that this Agreement shall be effective as a full and final accord, satisfaction and release of each and every matter specifically or generally referred to herein. Plaintiff acknowledges that he may hereafter discover facts in addition to or different from those which he now knows or believes to be true with respect to the Adversary Proceeding, but it is his intention to fully and finally and forever settle and release any and all matters, disputes and differences known or unknown, suspected or unsuspected, which do now exist, may exist hereafter or heretofore have existed between them with respect to any acts or failures to act on the part of Defendants with respect to the Injury Settlement Proceeds or the proceeds of the Injury Settlement Proceeds including, without limitation, the Released Claims. In furtherance of this intention, the release by the Plaintiff herein shall be, and will remain, in effect as a full and complete general release notwithstanding the discovery or existence of any such additional or different facts.

Further, the Settlement Agreement, approved by this court, provided as follows:

18. Binding on Successors. This Agreement and the covenants, releases and conditions contained herein shall apply to, and be binding upon or inure to the administrators, executors, legal representatives, heirs, assignees, successors, agents and assigns of the Parties hereto. With respect to Plaintiff, this Agreement shall be binding upon any and all persons who (i) are in privity with or may claim by or through the Plaintiff; or (ii) are in privity with or may claim by or through the Debtor inasmuch as Plaintiff, as the statutory representative of the Debtor and, as chapter 13 trustee, is the sole party entitled to the Injury Settlement Proceeds, the proceeds thereof and any claims asserting entitlement to or damages arising from any disposition of said proceeds.

Order Approving Compromise and Settlement, ¶¶ 15, 16, 18. At the request of the Trustee and the settling defendants, the Court entered a Consent Order Implementing Compromise and Settlement on February 19, 2014. This order simply provided the precise

mechanism for issuance of the settlement proceeds.

On January 23, 2014, Mr. TeShaun Moore, as attorney for the Plaintiffs, filed a Complaint against Bank and Mary Wallace in the Probate Court of Shelby County, Tennessee. On February 21, 2014, Bank filed a Notice of Removal in the Bankruptcy Court, which was assigned adversary proceeding No. 14-00064. Bank then filed a Motion for Summary Judgment and Plaintiffs filed a Motion to Remand. Bank later filed a Motion for Sanctions Pursuant to Fed. R. Bankr. P. 9011 as well as an Objection to the Motion to Remand.

Bank contends that the claims and causes of action asserted in the Probate Court Complaint were previously asserted against it in the bankruptcy adversary proceeding No. 12-00245. They also contend that the alleged causes of action asserted by the Plaintiffs are merely derivative of the debtor's rights, which rights are property of the bankruptcy estate by virtue of the Confirmation Order and 11 U.S.C. §§ 541(a) and 1306.

Plaintiffs contend that this court does not have jurisdiction over the Probate Court Complaint because only state law causes of action are alleged.

SUMMARY JUDGMENT

Summary judgment is appropriate if there are no genuine issues of material fact in dispute and the movant is entitled to judgment as a matter of law. Fed. R. Bankr. P. 7056 (making Fed. R. Civ. P. 56 applicable in adversary proceedings). Motions for summary judgment should be granted with great caution, because they truncate the adversarial process. But where the court finds that no reasonable grounds for dispute exist on any genuine issue, the court may grant a motion for summary judgment. See generally *Nat'l Enters., Inc. v. Smith*, 114

F. 3d 561, 563 (6th Cir. 1997); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

The initial "burden of proving that no genuine issue as to any material fact exists and that it is entitled to a judgment as a matter of law" is borne by the moving party. *R.S.W.W., Inc. v. City of Keego Harbor*, 397 F.3d 427, 433 (6th Cir.2005). The nonmoving party must then respond by setting forth "specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby. Inc.*, 477 U.S. 242, 250 (1986). The court, after construing the facts most strongly in favor of the nonmoving party, may grant the motion for summary judgment where it finds that the proper resolution of the issues of law requires that judgment be entered for the moving party. *Celotex*, 477 U.S. 317 (1986).

"A claim is barred by the res judicata effect of prior litigation if all of the following elements are present: '(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their 'privies'; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action.'" *Browning v. Levy*, 283 F.3d 761, 771 (6th Cir. 2002) (quoting *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 880 (6th Cir. 1997).

Here, a prior global settlement was entered into between Bank and the Trustee. The same claims that the Probate Estate asserts in its Probate Court Complaint against Bank were central to the settlement and release agreement that was approved by the court, and became final. As a result of the settlement, the adversary proceeding was dismissed with prejudice against Bank.

"A voluntary dismissal with prejudice operates as a final adjudication on the merits and has a res judicata effect." *Warfield v. AlliedSignal TBS Holdings, Inc.*, 267 F.3d 538, 542 (6th

Cir. 2001), citing *Harrison v. Edison Bros. Apparel Stores, Inc.*, 924 F.2d 530, 534 (4th Cir. 1991). "It is well established that dismissals with prejudice—including those resulting from settlement agreements or consent decrees—are treated as final judgments on the merits for purposes of res judicata." *Jacobs v. Venali, Inc.*, 596 F.Supp.2d 906, 914 (D. Md. 2009). See generally *Montgomery Cnty. v. Revere Nat'l Corp., Inc.*, 671 A.2d 1, 7 (1996); *Kershaw v. Fed. Land Bank of Louisville*, 556 F.Supp. 693, 697 (M.D. Tenn. 1983).

The Order of Compromise and Settlement has become final, and the adversary proceeding has been dismissed with prejudice against Bank. This constitutes a final judgment for purposes of the res judicata requirement.

The Probate Court Complaint is a subsequent action between those in privity with the same parties in the adversary proceeding. This satisfies the second prong of the res judicata requirements. The Trustee represents all creditors, as well as those who are successors to the rights of the debtor that existed on the date that the bankruptcy petition was filed. The Estate of Wiley Bailey derives its interest in the personal injury settlement proceeds, as well as its rights against Bank, solely from the debtor, who is represented by the Trustee. The Probate Estate, as well as the beneficiaries, have no interests or rights superior to those of the Trustee over the personal injury settlement proceeds or rights arising out of that settlement. Their interests were represented by the Trustee, and as such, the beneficiaries are in privity with the Trustee. The subsequent action was between parties whose interests were represented in the earlier action, and who were "privies." *Bittinger*, 123 F.3d at 880.

All of the claims in the Probate Court Complaint against Bank arose out of the debtor's personal injury settlement. Those claims were asserted in the adversary proceeding, and were

addressed in the settlement agreement. The claims alleged in the Probate Court Complaint share an identity with the causes of action which the Trustee settled. They all arose out of the debtor's personal injury settlement, and these have all been settled with Bank. To the extent that the Probate Estate asserts state law claims in the Probate Court Complaint, all state law causes of actions, as well as non-bankruptcy federal law causes of action, were settled by the Trustee with Bank. All causes of action brought in the Probate Court Complaint against Bank were addressed in the settlement. There are no causes of action in the Probate Court Complaint against Bank that have not been addressed in the global settlement, which represents the final judgment. All issues in the subsequent action against Bank were addressed in the settlement. Thus, the third prong is satisfied.

There is an identity of claims between the claims that the Probate Estate currently asserts and the claims brought in the adversary proceeding and settled by the Trustee. The claims all arose out of the same transaction and operative facts. *In re Micro-Time Mgmt. Sys., Inc.*, 1993 WL 7524, at *5 (6th Cir. Jan. 12, 1993). All claims here arose out of the personal injury settlement and facts related to and surrounding that settlement. The claims for negligence and breach of fiduciary duty arise out of facts surrounding the proceeds of the personal injury settlement, which was entered into after the bankruptcy case was filed, and thus were property of the estate.

The Probate Estate's Complaint is barred by the res judicata effect of the prior settlement of that adversary proceeding. Accordingly, there are no genuine issues of material fact in dispute, and Bank is entitled to judgment as a matter of law.

Bank's Motion for Summary Judgment is granted, and the Probate Estate's Complaint is

dismissed with prejudice as to Regions Bank and Wilma Titus.

REMOVAL AND REMAND

Bank properly removed this action from Probate Court to the bankruptcy court under 28 U.S.C. §§ 1452 and 1334 and Fed. R. Bankr. P. 9027. Section 1452, titled Removal of claims related to bankruptcy cases, permits a "party to remove a claim or cause of action in a civil action...to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." The district court under 28 U.S.C. § 1334(b) has original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11. Through the authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of the district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The causes of action alleged in the Probate Court Complaint are closely "related to" debtor's bankruptcy case in that they all relate to property of the bankruptcy estate under §§ 541 and 1306, and to the Trustee's statutory duties under §§ 1302 and 704. These causes of action are within the scope of "related to" jurisdiction. The Probate Court Complaint was properly removed to the bankruptcy court under 28 U.S.C. § 1452, because the causes of action are "related to" the bankruptcy case within the meaning of 28 U.S.C. § 1334(b), thus providing the bankruptcy court with subject matter jurisdiction.

Section 1452(b) permits a court to remand a removed claim or cause of action "on any

equitable ground." 28 U.S.C. § 1452(b). The factors most often listed by courts include in various combinations: "(1) duplicative and uneconomical use of judicial resources in two forums; (2) prejudice to the involuntarily removed parties; (3) forum non conveniens; (4) the state court's ability to handle a suit involving questions of state law; (5) comity considerations; (6) lessened possibility of an inconsistent result; and (7) the expertise of the court in which the matter was originally pending." *Watson v. Zigila*, 2010 WL 3582504, *5 (E.D. Mich. Sept. 13, 2010). See also *Parrett v. Bank One, N.A.* (*In re Nat'l Century Fin. Enters., Inc., Inv. Litig.*), 323 F.Supp.2d 861, 885 (S.D. Ohio 2004) (quoting *Mann v. Waste Mgmt. of Ohio, Inc.*, 253 B.R. 211, 214-15 (N.D. Ohio 2000)), *Ector Investors, L.P. v. BML, Inc.* (*In re Warren Producers, Inc.*) 358 B.R. 717, 719-20 (Bankr. W.D. Ky. 2007), Thomas B. Bennett, *Removal, Remand, and Abstention Related to Bankruptcies:Yet Another Litigation Quagmire!*, 27 Cumb. L. Rev. 1037 (1996-1997).

Among the factors that courts consider to determine if remand is proper, none weigh in favor of remanding the action to the Probate Court. Because this court has already entered an order approving a compromise, settlement and release resolving the very causes of action brought in the Probate Court Complaint against Bank, it would be duplicative and uneconomical to remand the action to the Probate Court to have it resolve the same causes of action against Bank. The settlement agreement provided for the release of all claims between the Bank and the Trustee, whether based in federal or state law, involving the personal injury action of the debtor. It is the Trustee under §323 who is "the representative of the estate" and who has the "capacity to sue and be sued." 11 U.S.C. § 323(a)&(b). It is the Trustee under §§ 1302(b)(1) and 704(a)(1) who has the duty to "collect and reduce to money the property of the estate for which

such trustee serves...." 11 U.S.C. § 704(a)(1). To remand the action to Probate Court to resolve this same issue would be economically wasteful, and would be wasteful of judicial resources.

The removal of the Probate Court Complaint to this court, and the denial of the Motion to Remand would not cause prejudice to the involuntarily removed parties.[3] Any prejudice to the Plaintiffs was self-imposed when they failed to object to the Motion to Approve Compromise and Settlement. The Plaintiffs had an opportunity to object to the settlement, but failed to do so. Since all claims arising out of or related to the personal injury action brought by the debtor became property of the estate, the Trustee was the proper party, but the heirs had an opportunity to voice their concerns through an objection. They failed to do so. There is no prejudice to them now caused by the removal or by the denial of the Motion to Remand. Except for any cause of action abandoned by the Trustee, Plaintiffs have no causes of action to pursue in Probate Court related to the debtor's lawsuit or the proceeds therefrom.

The forum non conveniens factor provides absolutely no reason to remand, since the Probate Court and the bankruptcy court are located less than three blocks apart. The Probate Court is well able to decide the state law causes of action alleged in the Complaint against Bank, but those causes of action are not the Plaintiffs to bring. Those causes of action have been alleged in the adversary proceeding filed in the bankruptcy court, and have been settled by the Trustee. No issues of comity exist here, since no judgment has been rendered by the Probate Court in the removed action, and the action was removed less than a month after it was filed.

The possibility of an inconsistent result will be increased if the Complaint is remanded to

[3] Mary Wallace has expressed no view regarding the removal of the Probate Court Complaint filed against her.

Probate Court. In its Order Granting Temporary Restraining Order and Adding George W. Stevenson, Chapter 13 Trustee, as Plaintiff, this court determined that the claims are property of the estate. This court has approved the Trustee's settlement agreement with Bank, and it is appropriate for this court to interpret its own order to avoid an inconsistent result. The interpretation of these orders requires an understanding of bankruptcy concepts, and this court has expertise in the field of bankruptcy, and is better suited to interpret these orders.

The defendant, Mary Wallace, was not a party to the settlement agreement with the Trustee, and the Trustee has not pursued the bankruptcy estate's claims against her. Under 11 U.S.C. § 554(c), property not administered at the time of the closing of the case is abandoned to the debtor. At the closing of the bankruptcy case, if the Trustee has not pursued the claims against Mary Wallace, Plaintiffs may pursue those abandoned claims. At that time the Probate Estate would have claims against Mary Wallace in which the bankruptcy estate claims no interest. As to Mary Wallace, remand is appropriate, since inconsistent results are not likely, only state law issues would remain, there would be no duplication of efforts, and comity would weigh in favor of remand.

The Motion to Remand is denied as to Bank, but is granted as to Mary Wallace. The Probate Estate is ordered to amend its Complaint to dismiss Regions Bank and Wilma Titus with prejudice.

SANCTIONS

The Motion for Sanctions filed by Bank against Mr. Moore pursuant to Fed. R. Bankr. P. 9011 is denied. The goal of Rule 9011 is to deter abuse of the bankruptcy system by

discouraging improper, frivolous or abusive acts – acts which serve no purpose other than to delay or cause an unwarranted increase in the cost of litigation. The burden of proof is on the movant to prove that sanctions are merited. See generally *Munn v. Michigan Bank-Port Huron*, 1991 WL 11266 (6th Cir. Feb. 4, 1991), *Sharer v. State Bank of Cross Plains* (*In re Sharer*), 2014 WL 2446077 (Bankr. W.D. Wis. May 28, 2014), *In re Enmon*, 2013 WL 494049 (Bankr. E.D. Tex. Feb. 7, 2013), *In re McLean Wine Co., Inc.*, 463 B.R. 838 (Bankr. E.D. Mich. 2011). To determine if a paper was presented frivolously, the court must find that there is an obvious lack of merit, and should resolve ambiguities in favor of the filing party. *Oliveri v. Thompson*, 803 F.2d 1265, 1275 (2d Cir. 1986), cert. denied, *Suffolk Cnty. v. Graseck*, 480 U.S. 918 (1987). The Memorandum of Law prepared by Mr. Moore on behalf of his clients indicates the good faith with which he filed the pleadings. The Memorandum reveals that Mr. Moore's understanding of the law convinced him that there were causes of action in the Probate Court Complaint against Bank that were not addressed in the settlement agreement. The court does not find that Mr. Moore filed the Probate Court Complaint for an improper purpose, to delay or to increase costs unnecessarily. The motion for sanctions is therefore denied.

CONCLUSION

The court makes clear in this ruling that the settlement between the Trustee and Bank was a global one that specifically provided for the settlement of all Bankruptcy Code, federal and state law claims that were brought or could have been brought against Bank by the debtor through the Trustee or those in privity with them. The beneficiaries, as well as the Administrator of the Probate Estate, have no greater rights than the debtor to pursue actions related to property

of the bankruptcy estate. The Trustee acquired those rights when the debtor filed the Chapter 13 case. The Trustee has settled those actions, without objection by anyone, and with the approval of the court.

Res judicata prohibits this court, and any other court, from relitigating these disputes. All factual and legal disputes that arose against Bank have been settled, and are final. The settlement is global, and no further causes of action exist against Bank.

Accordingly and based on the foregoing:

IT IS SO ORDERED AND NOTICE IS HEREBY GIVEN THAT

1.) The Motion for Summary Judgment filed by Regions Bank and Wilma Titus is granted.

2.) The Plaintiffs' Motion to Remand is denied, except as to Mary Wallace.

3.) Plaintiffs are ordered to amend the Probate Court Complaint to dismiss Regions Bank and Wilma Titus with prejudice.

4.) The Motion for Sanctions filed by Regions Bank and Wilma Titus is denied.

cc:

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