

DEC 22 2009

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:

ALLIANCE RESOURCE  
MANAGEMENT, LLC,

Debtor.

CASE NO. 07-61934-JB

CHAPTER 7

W. FRANK NEWTON and  
LINC INVESTMENTS, LLC,

Movants.

CONTESTED MATTER

v.

HARRY W. PETTIGREW, Chapter 7  
Trustee, CHICAGO TITLE INSURANCE  
COMPANY and FIDELITY NATIONAL  
TITLE INSURANCE COMPANY,

Respondents.

CHICAGO TITLE INSURANCE CO.  
COMPANY and FIDELITY NATIONAL  
TITLE INSURANCE COMPANY,

Movants,

CONTESTED MATTER

v.

HARRY W. PETTIGREW, Chapter 7  
Trustee,

Respondent.

ORDER

On August 27, 2009, the Court entered an Order on two related motions in this Chapter 7 case: (1) a motion for relief from the automatic stay filed by Chicago Title Insurance

Company and Fidelity National Title Insurance Company (collectively the "Title Insurers") (Docket No. 553) and (2) a motion filed by W. Frank Newton ("Newton") and Linc Investments, LLC ("Linc") to enforce a settlement agreement (Docket No. 543). The Court ruled on certain aspects of the motions but allowed the parties to submit additional briefs on whether a settlement agreement precluded the Title Insurers from asserting a claim for unjust enrichment or state law RICO claims against Newton and Linc in an action pending in the United States District Court, *Chicago Title Insurance Co. and Fidelity National Title Insurance Co. v. Equity Trust Company as Custodian for the benefit of the IRA account of H. Oliver Welch, Linc Investments, LLC, H. Oliver Welch, and W. Frank Newton*, No. 09-CV-00271-WSD, (N.D.Ga. filed Jan. 30, 2009) (the "District Court Action"). After carefully reviewing all of the papers filed by the parties, the Court concludes that the settlement agreement approved by the Bankruptcy Court on April 1, 2008 among the Chapter 7 Trustee, Chicago Title Insurance Company, Ticor Title Insurance Company, Linc, Newton, and WFN Finance Company does not preclude the Title Insurers from asserting particularized claims against Newton and Linc for unjust enrichment or state law RICO claims in the District Court.

Newton and Linc did not obtain any release in the settlement agreement from the Title Insurers or the lenders insured by the Title Insurers, and there are no pending actions by the Chapter 7 Trustee in the Bankruptcy Court against Newton and Linc. Thus, the Title Insurers are free to pursue whatever claims they may have against Newton and Linc so long as they are particularized claims. It is the bankruptcy law, not the settlement agreement, that precludes the Title Insurers from pursuing general claims that belonged to the Trustee. The parties recognize that the Bankruptcy Court cannot determine the sufficiency of the claims pled in the District Court. Whether the Title Insurers can establish a particularized injury by Newton and Linc must be determined in the District Court Action. If the Title Insurers cannot prove or

have not properly alleged a particularized injury, then Newton and Linc should file a proper motion to dismiss or a motion for summary judgment in the District Court.

Newton and Linc originally argued that the settlement agreement precluded the Title Insurers from asserting claims in the District Court, as this would amount to "claim splitting". The Court gave counsel time to brief this argument more fully, but Newton and Linc's post-hearing brief makes no mention of this argument. If the claim splitting argument has merit, it should be raised as an affirmative defense in the District Court Action. The prohibition of claim splitting is part of the doctrine of claim preclusion or *res judicata*.<sup>1</sup> *Res judicata* is an affirmative defense and as such should be pled in the District Court Action. Fed. R. Civ. P. 8(c).

In conclusion, Newton and Linc's motion to enforce the settlement agreement to preclude the Title Insurers from pursuing particularized claims in the District Court is DENIED. The Title Insurers had also filed a motion for relief from the automatic stay to pursue their claims in the District Court Action. To the extent that motion pertains to claims against Newton and Linc, that motion is GRANTED.

IT IS SO ORDERED, this 22<sup>nd</sup> day of December, 2009.

  
JOYCE BIHARY

UNITED STATES BANKRUPTCY JUDGE

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<sup>1</sup> Central to the claim preclusion doctrine are the concepts of merger and bar. Merger and bar prohibit claim splitting, meaning that all facts, allegations, and legal theories which support a plaintiff's claim, as well as all possible remedies and defenses, must be presented in one action or be lost. The concept of merger provides that when a plaintiff succeeds at litigation and receives a valid and final judgment, the plaintiff's claim merges into the judgment, and the original claim, and all defenses to it, whether asserted or not, are extinguished. In other words, a rendered judgment is "the full measure of relief to be accorded between the same parties on the same 'claim' or 'cause of action.'" *Gutherman v. 7-Eleven, Inc.*, 278 F.Supp.2d 1374, 1377 (S.D. Fla. 2003) (quoting *Kaspar Wire Works, Inc. v. Leco Eng'g and Mach., Inc.*, 575 F.2d 530 (5th Cir. 1978)); see also 18 JAMES WM. MOORE ET. AL., MOORE'S FEDERAL PRACTICE ¶ 131.01 (3d ed. 2009); BLACK'S LAW DICTIONARY 1425 (9th ed. 2009).

In re: Alliance Resource Management, LLC  
Case No. 07-61934-JB

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CERTIFICATE OF MAILING

I hereby certify that the foregoing Order and Notice of Hearing was mailed to the following:

Todd E. Hennings  
Macey, Wilensky, Kessler & Hennings, LLC  
230 Peachtree Street, NW, Suite 2700  
Atlanta, GA 30303-1561

Craig K. Pendergrast  
Seyfarth Shaw, LLP  
One Peachtree Pointe, Suite 700  
1545 Peachtree Street, NE  
Atlanta, GA 30309-2401

Harry W. Pettigrew  
Pettigrew & Associates, PC  
P.O. Box 4030  
Decatur, GA 30031

James C. Cifelli  
Stewart F. Clayton, Jr.  
Lamberth, Cifelli, Stokes, Ellis & Nason  
Suite 550  
3343 Peachtree Road, NE  
Atlanta, GA 30326-1022



Nick Mahone  
Relief Courtroom Deputy Clerk  
for Chief Judge Joyce Bihary

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