2013 IL App (1st) 113051-U

SIXTH DIVISION
JUNE 21, 2013

No. 1-11-3051

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAVID ABRAMS, Not Individually but as Liquidating Trustee of Heartland Memorial Hospital, LLC, Plaintiff-Appellant, v. DLA PIPER US LLP and McGUIRE WOODS, LLP, Defendants-Appellees. (COLLINS & COLLINS, HAROLD E. COLLINS, and MICHAEL R. COLLINS, Defendants.)	)	Appeal from the Circuit Court of Cook County. No. 09 L 002543 Honorable Allen S. Goldberg, Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Where a bankruptcy court retains jurisdiction over all litigation in a Chapter 11 plan of reorganization and designates that the debtor must bring the action, a state court does not have jurisdiction to hear the case without the bankruptcy court's approval, and the liquidating trustee does not have the authority to bring the action in the trustee's name.

¶ 2 Heartland Memorial Hospital, LLC (Heartland) owned and operated a surgery center and

hospital in Munster, Indiana. Heartland is a wholly owned subsidiary of iHealthcare, Inc. (iHealthcare). Starting in 2002, Heartland became engaged in a series of monetary transactions, some of which Heartland was directed to perform by iHealthcare, that led to Heartland becoming nearly insolvent. In 2007, a group of Heartland's creditors filed an involuntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Indiana, naming Heartland as the debtor. Heartland later voluntarily converted the case to a voluntary Chapter 11 proceeding and plaintiff David Abrams was appointed by the bankruptcy court as the liquidating trustee pursuant to a plan filed by Heartland. Plaintiff then filed a complaint in the circuit court of Cook County against a director of iHealthcare, lawyers and law firms who represented Heartland in the transactions that resulted in Heartland's grave financial condition. The complaint alleges that defendants DLA Piper and McGuire Woods,[1] two large law firms, committed legal malpractice and breached their fiduciary duty to Heartland. DLA Piper filed a motion to dismiss under section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)) and McGuire Woods filed a combined motion to dismiss under sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2008)). The trial court granted McGuire Woods' section 2-619 motion, finding that it did not have jurisdiction since the reorganization plan provided that the bankruptcy court shall retain jurisdiction over "any litigation," and dismissed the complaint against all defendants. Plaintiff filed a motion to

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[1] Plaintiff settled the claims against defendants Harold Collins, Michael Collins, and the law firm Collins & Collins who were dismissed from the appeal by order of this court dated April 8, 2013.

reconsider, which the trial court denied. Plaintiff appeals. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On March 3, 2009, plaintiff, in his capacity as liquidating trustee, filed a complaint in the circuit court of Cook County against defendants, alleging several counts of legal malpractice and breach of fiduciary duty.

¶ 5 I. Facts Alleged In The Complaint

¶ 6 Heartland[2] was organized as an Indiana limited liability company, whose sole member was Heartland's parent corporation iHealthcare. iHealthcare was organized in 2002 and was the sole owner of Heartland's equity. Heartland owned an outpatient surgical center and inpatient hospital, and provided medical services and leased medical office building suites. Until October 2005, Heartland was managed by the directors of iHealthcare, which included defendant Harold Collins (Harold).

¶ 7 In 2002, Heartland began an expansion of its hospital facility. To pay for the expansion, Heartland entered into a sale/leaseback agreement with Munster Medical Holdings, LLC. Heartland sold its main hospital facility to Munster Medical Holdings for $30 million and agreed to lease the facility for $298,723 per month for the first five years. By 2005, the expense of the expansion project had caused or contributed to Heartland becoming insolvent. It was unable to pay its creditors and owed approximately $900,000 in employee withholding taxes to the Internal Revenue Service and the Indiana Department of Revenue for the period from April 2005 to

[2] Before the events of this case, Heartland was known as Illiana Surgery and Medical Center.

October 2005.

¶ 8 At that time, Harold was a member of iHealthcare's board of directors, and was one of the iHealthcare directors who managed Heartland. Harold and the other members of the board of directors contacted Leroy Wright, of Wright Capital Partners (Wright), to discuss an acquisition of either Heartland's assets or the directors' equity interest in iHealthcare. The Heartland directors agreed to turn over control of its operations to Wright in exchange for a $2.5 million loan while they continued to negotiate the terms of an outright acquisition of Heartland. DLA Piper represented Wright at the time, and when Wright took control of the hospital facility, DLA Piper began to represent Heartland as well.

¶ 9 iHealthcare's shareholders, including its directors who managed Heartland, then agreed to sell their stock in iHealthcare to Wright. McGuire Woods LLP represented iHealthcare and its shareholders in this transaction. Wright did not have sufficient cash on hand, so the iHealthcare shareholders agreed to a leveraged buyout, in which Wright sold Heartland's assets and transferred the proceeds to iHealthcare's shareholders in exchange for their stock in iHealthcare. As part of this agreement, Heartland sold its interest in a group of physician practices located outside the main hospital facility to AIC Holding V, LLP for $18 million, then leased them back for $163,000 per month.

¶ 10 After the deal with Wright closed, DLA Piper recognized that Heartland was in financial trouble, and proposed a plan to remove Wright as Heartland's manager. As part of the plan, Heartland agreed to assume responsibility for payment of over $883,000 in unpaid legal fees for work DLA Piper had performed for Wright. In October, 2006, Heartland sold its main hospital

campus and most of its remaining assets to the Sisters of St. Francis Health Services.

¶ 11 II. Initiation of Bankruptcy Proceeding

¶ 12 On January 31, 2007, three of Heartland's creditors filed an involuntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Indiana, naming Heartland as debtor. On March 2, 2007, Heartland converted the case to a Chapter 11 proceeding. On November 19, 2008, the bankruptcy court approved Heartland's liquidating plan of reorganization and appointed plaintiff as liquidating trustee.

¶ 13 At the time that the reorganization plan was proposed, Heartland had several adversary actions pending in the bankruptcy court and two civil suits pending in other courts: *Illiana Surgery & Medical Center LLC v. Hartford Fire Insurance Co.*, No. 2:07-CV-00003 (N.D. Ind. 2007), and *Collins & Collins v. Illiana Surgery & Medical Center*, No. 09 L 1470 (then numbered 06 L 5233) (Cir. Ct. Cook Co.). These cases were included in the Disclosure Statement filed in support of the reorganization plan. The Disclosure Statement also listed potential claims Heartland had against defendants for legal malpractice. The plan retained Heartland's right to pursue the pending and potential claims, and the Disclosure Statement authorizes plaintiff with the authority to liquidate the claims, "whether pending as an Adversary Proceeding in this Case or in any Federal or State Court, pending prior to the Petition Date or not yet pending."

¶ 14 Section 3.1 of the liquidating plan provides the summary of the plan. It states that Heartland's assets are to be liquidated. Section 3.1 states that "certain assets and the proceeds of certain assets will be paid directly to the Secured Creditors. All of the remaining assets of the

Debtor shall be transferred to a Liquidating Trust (except those assets which, as a matter of law, cannot be transferred)." In a footnote, the plan states that these remaining assets are to be transferred to the Liquidating Trust "includ[ing], but *** not limited to the litigation initiated by the Debtor prepetition [*sic*] against the Hartford Insurance Company, *professional malpractice claims*, Chapter 5 claims (preferences and fraudulent conveyances) (i.e. Avoidance claims), director and officer claims, and any other litigation initiated by the Debtor prior to confirmation." (Emphasis added.) In the next paragraph, the plan states that

> "[a]ssets which cannot be transferred will remain with the Debtor. The Plan proponents believe, for example, that *certain malpractice claims against attorneys cannot be transferred to the Liquidating Trust*. These assets will remain with the reorganized Debtor and the proceeds from these assets will be deposited into the Liquidating Trust for distribution to creditors according to the terms of the Plan and the Bankruptcy Code." (Emphasis added.)

An addendum to the plan states that

> "the Debtor shall be deemed to have transferred the Liquidation Proceeds and all other property of the Debtor's Estate (other than any claim designated by the Liquidating Trustee that he believes should not be transferred in order [to] preserve the viability of the claim including, without limitation, any and all legal malpractice claims) to the Liquidating Trust."

¶ 15 Section 9.13(ii)(2) of the plan states that the bankruptcy court "shall retain exclusive subject matter jurisdiction of the Case, and all proceedings arising therein or related thereto, including proceedings that aid the consummation of this Plan such as the following: *** (2) hearing and determining any Litigation irrespective of whether it is brought by the Debtor, the Liquidation Trustee or the Committee." Section 1.60 of the plan defines "litigation" as "[t]he causes of action, rights, suits, or proceedings, whether in law or in equity, whether known or unknown, whether pending or not, that the Debtor, the Debtor's estate, the Litigation Trust or the Reorganized Debtor holds or may hold against any person." The plan and disclosure statement further state that iHealthcare had also filed a bankruptcy petition, but that the plan did not consolidate Heartland with iHealthcare for bankruptcy proceeding purposes, and the plan does not affect the creditors or assets of iHealthcare in any manner.

¶ 16 On November 19, 2008, the bankruptcy court entered an order confirming the plan. The order contained the following sentence: "This Order shall become effective immediately and the stay set forth in Rule 3020(e) of the Federal Rules of Bankruptcy Procedure shall not apply."

¶ 17 III. The Case At Bar

¶ 18 Plaintiff filed the complaint at issue against defendants on March 3, 2009, without approval of the bankruptcy court. The complaint alleges one count of legal malpractice against McGuire Woods, one count of legal malpractice against DLA Piper, and one count of breach of fiduciary duty against DLA Piper.

¶ 19 Plaintiff's legal malpractice claim against McGuire Woods alleges that McGuire Woods represented iHealthcare in the sale of iHealthcare's equity to Wright, and that "[c]oncurrently,

McGuire Woods represented, and had an attorney-client relationship with, Heartland." Plaintiff alleges that McGuire Woods had a duty to "competently represent Heartland in all matters that Heartland would reasonably have understood to be within the scope of its engagement" and that "McGuire Woods breached its duties to Heartland because, among other things, at the time of [the equity] transaction, McGuire Woods knew or should have known that there were serious questions about the financial viability of Heartland as an operating entity." Plaintiff alleges that McGuire Woods

> "failed to warn its client Heartland and otherwise facilitated a transaction in which: (a) $7.3 million in assets of Heartland were monetized so that this amount could be transferred to the shareholders of Heartland's parent entity; (b) Heartland was saddled with substantially disadvantageous lease terms that would inevitably cause a further and more rapid deterioration in its already precarious financial condition; (c) Heartland was saddled with an incompetent management team; and (d) Heartland paid $382,000 in DLA Piper's legal fees for its work on the merger even though the merger documents specified that each party to the merger was to bear its own legal fees."

Plaintiff alleges that "[h]ad Heartland been properly and competently advised by McGuire Woods, it would not have engaged in the [equity transaction] *** or it would have engaged in [the equity transaction] only on terms that were in its interest."

¶ 20 Plaintiff's legal malpractice count against DLA Piper alleges that DLA Piper "acted as attorney for [Wright] in connection with the [equity transaction]. In addition, at the time [Wright] took operational control of Heartland *** DLA Piper began representing Heartland." Plaintiff alleges that, at the time of the equity transaction, DLA Piper "knew or should have known that there were serious questions about the financial viability of Heartland as an operating entity," and that,

> "[n]otwithstanding this knowledge, DLA Piper provided substantial legal assistance directed toward the completion of a transaction through which: (a) $7.3 million in assets of Heartland were monetized so that this amount could be transferred to the shareholders of Heartland's parent entity; (b) Heartland was saddled with substantially disadvantageous lease terms that would inevitably cause a further and more rapid deterioration in its already precarious financial condition; (c) Heartland was saddled with a management team headed by a man ([Leroy] Wright) that DLA Piper would, within a matter of four months, attempt to replace; and (d) Heartland paid $382,000 in DLA Piper's legal fees for its work on the merger even though the merger documents specified that each party to the merger was to bear its own legal fees."

Plaintiff alleges that "DLA Piper benefitted substantially from" the plan to remove Wright from

Heartland because "Heartland agreed to 'assume and be responsible for payment of over $883,000 in DLA Piper invoices that "reflect work performed for and on behalf of Wright." ' " Plaintiff further alleges that, at the time Heartland sold most of its remaining assets to the Sisters of St. Francis, "DLA Piper knew or should have known" that Heartland's financial viability was in peril, and that, notwithstanding this knowledge, DLA Piper provided "substantial legal assistance" directed toward a monetary transaction that was not in Heartland's best interest. Plaintiff alleges that "[h]ad Heartland been properly and competently advised by DLA Piper, it would not have engaged in the transactions *** or it would have engaged in them only on terms that were in its interest."

¶ 21 Plaintiff's breach of fiduciary duty count against DLA Piper alleges that DLA Piper "owed Heartland fiduciary duties, including the duty of loyalty and the duty not to put its own interests or the interests of its other clients above those of Heartland." Plaintiff alleges that DLA Piper breached these duties because it "(a) placed the interest of other clients, particularly Wright Capital Partners and its related persons and entities above those of Heartland, and (b) maneuvered to have Heartland pay it for work that the firm performed for other clients."

¶ 22 DLA Piper filed a motion to dismiss the complaint, pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)). McGuire Woods filed a combined motion to dismiss the complaint, pursuant to sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2008)). See 735 ILCS 5/2-619.1 (West 2008) (stating that motions under sections 2-615 and 2-619 may be filed together as a single motion in any combination). Both defendants argue that attorneys have no duty to warn

clients about potential bad business deals. Defendants also argue that because the complaint alleges that Heartland's management participated in and approved the deals about which it complains, its claims are barred by the doctrine of *in pari delicto*.

¶ 23 DLA Piper's motion further argues that it did not owe Heartland a duty during the transaction to remove Wright because Heartland was not a party to that transaction. DLA Piper argues that plaintiff failed to plead sufficient facts to support its legal malpractice and breach of fiduciary duty counts. DLA Piper also argues that plaintiff's legal malpractice and breach of fiduciary duties counts are duplicative because they result from the same set of facts and assert the same injury.

¶ 24 McGuire Woods' motion argues that the trial court did not have jurisdiction over the lawsuit because the reorganization plan divested the trial court of jurisdiction by establishing in the bankruptcy court exclusive jurisdiction over civil suits brought by Heartland. McGuire Woods argues that plaintiff was not the proper party to bring a lawsuit because the plan left malpractice claims with the debtor, Heartland, not the liquidating trustee. McGuire Woods also argues that the complaint did not establish an attorney-client relationship between McGuire Woods and Heartland because it alleges that McGuire Woods acted as attorneys for iHealthcare, not Heartland.

¶ 25 On March 2, 2010, the trial court granted McGuire Woods' section 2-619 motion to dismiss and dismissed the complaint with prejudice with regard to all defendants. The trial court stated that it:

"finds that, based on a clear reading of the Plan of Reorganization,

> that Defendants McGuire [Woods] and Collins' 2-619 Motion to Dismiss should be granted without prejudice.
>
> Section 9.13 of the plan clearly states that all litigation claims relating to Heartland fall in the exclusive jurisdiction of the Bankruptcy Court, and Section 3-1 states that Heartland and not a trustee must bring a malpractice claim.
>
> Moreover, these claims arise under the jurisdiction of the Bankruptcy Court as they are tort claims that involve the debtor that were known and brought to the attention of the Bankruptcy Court during pendency of the reorganization and would affect the value of the property in the debtor's estate.
>
> Though DLA [Piper] did not raise these 2-619 arguments, this Court finds they equally apply to them. Therefore, the complaint should be dismissed under 2-619 with prejudice for the same reasons regarding DLA [Piper]."

¶ 26 Plaintiff filed a motion for reconsideration. The motion argued that the plan does not, and cannot, divest the trial court of its jurisdiction to hear state law claims related to the bankruptcy case. In a footnote, plaintiff requests leave to amend the complaint to substitute Heartland as plaintiff. Prior to filing the motion for reconsideration, plaintiff filed a motion in the bankruptcy court to interpret the jurisdiction clause, section 9.13(ii)(2) of the plan. Plaintiff's motion to reconsider asked the trial court to stay its ruling on the motion until the bankruptcy

court had a chance to issue an order interpreting the jurisdiction clause in the plan, which the trial court did stay.

¶ 27 The bankruptcy court granted the motion to interpret, and it stated the following regarding section 9.13(ii)(2) of the plan:

> "What in fact does § 9.13(ii)(2) state? The term 'litigation' is defined by § 1.60 of the plan in the broadest imaginable terms in relation to matters in which the entities therein described - including the Liquidating Trustee - were, are, or may be the plaintiff. This provision does not limit the definition of 'litigation' to cases either within the exclusive jurisdiction of the bankruptcy court or cases which are within the concurrent jurisdiction of the bankruptcy court, as that jurisdiction is provided by 28 U.S.C. § 1334(b). The plan defines 'litigation', in the context above, as all litigation. Section 9.13(ii)(2) states very clearly that the court 'shall retain exclusive subject matter jurisdiction of... all proceedings... related thereto', including 'hearing and determining any litigation...' (emphasis supplied). Thus, there is no ambiguity in § 9.13(ii)(2): it very clearly provides that the United States Bankruptcy Court shall retain exclusive jurisdiction of any 'related to' litigation, whether that matter was initiated prior to the filing of bankruptcy, during the pendency of the bankruptcy case prior to confirmation of the

> plan, or after confirmation of the plan. As a result, Judge Goldberg's interpretation of § 9.13(ii)(2) is absolutely correct."

However, that was not the end of the bankruptcy court's analysis:

> "The plan provision, as so applied, violates 28 U.S.C. § 1334(b), which defines the scope of federal jurisdiction with respect to cases of the nature of that now pending before Judge Goldberg, stating the following:
>
> '(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.'
>
> The United States Bankruptcy Court's jurisdiction, as derivative of that of the United States District Court, is only 'concurrent' jurisdiction with other courts with respect to 'related to' proceedings in relation to a bankruptcy case. Without citation of authority or exposition of why this is true - it just **is** true - the United States Court of Appeals for the Seventh Circuit is the strictest of the [federal courts of appeal] in circumscribing the jurisdiction of the United States Bankruptcy Courts, including

> jurisdiction over 'related to' matters. It is anathema to the Seventh Circuit that bankruptcy courts expand their jurisdiction beyond that strictly allowed by Acts of Congress. This court is well aware of the Seventh Circuit's views of its jurisdiction, and in innumerable cases this court has acted upon that restricted jurisdiction in determining issues before it.
>
> The United States Bankruptcy Court is a creature of limited statutory jurisdiction. That jurisdiction is specified by an Act of Congress, and this court is not in any manner empowered to exceed the boundaries of the jurisdiction so established. As it is written, § 9.13(ii)(2) states an impermissible expansion of the jurisdiction of the United States Bankruptcy Court over proceedings 'related to' the case of Heartland Memorial Hospital, LLC."

The bankruptcy court further stated:

> "It is true that this court has subject matter jurisdiction over a 'related to' matter such as that involved in the case before Judge Goldberg. It is also true that 28 U.S.C. § 1334(b) provides Judge Goldberg with concurrent jurisdiction over that case. In light of the statutory limitations on the court's jurisdiction, this court could not validly divest state courts of concurrent jurisdiction provided for by § 1334(b), any more than this court, for example, could

> impart jurisdiction to state courts for matters within the scope of 11 U.S.C. § 523(c)(1), or empower a state court to enter an order confirming a Chapter 11 plan. Construed in the manner in which it must be construed, § 9.13(ii)(2) exceeds the federal jurisdiction which this court may exercise.
>
> The bottom line is that the court entered a final order confirming a Chapter 11 plan of liquidation, which plan included a provision which is not a valid exercise of the court's continuing jurisdiction either with respect to post-confirmation matters in relation to the debtor's case, or with respect to proceedings related to that case in general. Section 9.13(ii)(2) very clearly contravenes applicable law. Although encompassed within the court's order of confirmation, the court was not specifically aware of the expansive, and invalid, jurisdictional scope of § 9.13(ii)(2) at the time of entry of the confirmation order. This issue was brought to the court's attention by the Motion. Now that it has been brought to the court's attention, the court has the authority under Fed. R. Bankr. P. 9024/Fed. R. Civ. P. 60(b) to correct the error: *Dish v. Rasmussen*, 417 F.3d 769 (7th Cir. 2005)."

The bankruptcy court ordered that the first sentence of section 9.13(ii)(2) be deleted and replaced with the following sentence: "The court *shall retain subject matter jurisdiction of the Case*, and

all proceedings arising therein or related thereto, to the extent of the subject matter jurisdiction provided for by applicable law, including 28 U.S.C. § 1334(b), including proceedings that aid the consummation of this Plan such as the following." (Emphasis added.) The bankruptcy court also stated in its order that its order could not bind the trial court or reverse or alter the trial court's previous orders.

¶ 28 The parties filed the bankruptcy court's order with the trial court, in connection with the pending motion to reconsider. On October 5, 2011, the trial court denied plaintiff's motion to reconsider, finding the following:

> "The motion for reconsideration should be denied. The Plaintiff did not present any new evidence, facts, legal theories, or show how this court erred in the application of law. Nothing has changed in the facts or legal theories of this case since this court last ruled.
>
> Although this court recognizes that it owes no deference to Judge Klingenberger's ruling and appreciates the application of the Rooker-Feldman Doctrine, the court notes that Judge Klingenberger agreed with this court's interpretation, and did amend Section 9.13(ii)(2) of the bankruptcy agreement.
>
> However, the amendment included in Judge Klingenberger's opinion indicates that,
>
> 'The court shall retain subject matter jurisdiction of the case

> and all proceedings arising therein or related thereto to the extent of the subject matter jurisdiction provided by applicable law, including 28 USC Section 1334(b).'
>
> Section 1334(b) then gives original jurisdiction to the District Courts. The Plaintiff has failed to provide this court with any new facts, legal theories, or show how this court erred in the application of law."

The trial court did not rule on whether or not plaintiff had leave to amend the complaint to name Heartland as plaintiff. On the same date, plaintiff filed a complaint in the bankruptcy court alleging a claim of legal malpractice against McGuire Woods.

¶ 29 Plaintiff now appeals the orders dismissing the complaint and denying reconsideration.

¶ 30 ANALYSIS

¶ 31 Plaintiff raises two issues on appeal: whether the plan improperly divested the trial court of its subject matter jurisdiction to hear the state law claims alleged in the complaint, and whether the person appointed as a company's representative and manager under the Bankruptcy Code (11 U.S.C. § 1123(b)(3) (West 2008) has standing to file a lawsuit on the company's behalf.

¶ 32 I. Standard of Review

¶ 33 This court reviews motions to dismiss under section 2-619 *de novo*. *Currie v. Wisconsin Central, Ltd.*, 2011 IL App (1st) 103095, ¶ 24. *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 34 II. Subject Matter Jurisdiction

¶ 35 Plaintiff first argues that the trial court improperly concluded that section 9.13(ii)(2) of the plan divested the trial court of its jurisdiction over the matter when it stated that the bankruptcy court would retain "exclusive" jurisdiction over matters related to the bankruptcy proceeding. The trial court found that it does not have jurisdiction over this case because the plan "clearly states that all litigation claims relating to Heartland fall in the exclusive jurisdiction of the Bankruptcy Court." Plaintiff argues that this finding is in error because neither a plan of reorganization nor a bankruptcy court's order adopting the plan may limit a state court's jurisdiction or expand a federal bankruptcy court's jurisdiction. Defendants respond that the plan neither divested jurisdiction from the trial court, nor did it expand the jurisdiction of the bankruptcy court. Instead, defendants argue that the plan required the bankruptcy court to retain its existing jurisdiction over the matter.

¶ 36 Illinois circuit courts are courts of general jurisdiction, and they are empowered to hear "all justiciable matters." *Magnetek, Inc. v. Kirkland & Ellis, LLP*, 2011 IL App (1st) 101067, ¶ 23. Under the United States' system of dual sovereignty, " 'state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States.' " *Yellow Freight System, Inc. v. Donnelly*, 494 U.S. 820, 823 (1990) (quoting *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990)). "To give federal courts exclusive jurisdiction over a federal cause of action, Congress must, in an exercise of its powers under the Supremacy Clause, affirmatively divest state courts of their presumptively concurrent jurisdiction." *Yellow Freight*, 494 U.S. at 823.

¶ 37 The jurisdiction of the bankruptcy courts, like that of all federal courts, is based in statute. *In re Fedpak Systems*, 80 F.3d 207, 213 (7th Cir. 1996). The United States Code provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b) (West 1996). A case is "related to" a bankruptcy proceeding when the dispute affects the amount of property for distribution in the debtor's estate or the allocation of property among the creditors. *In re Fedpak Systems*, 80 F.3d at 213-14. Legal malpractice claims, which arise under state law, are related to a bankruptcy proceeding if their outcome will have a direct and substantial effect on the amount of property for distribution in the debtor's estate. See *Diamond Mortgage Corp. v. Sugar*, 913 F.2d 1233, 1239 (7th Cir. 1990).

¶ 38 In the case at bar, the parties agree that the outcomes of the legal malpractice claims will have a direct and substantial effect on the amount of property for distribution in Heartland's estate. The claims are listed in the plan and the disclosure statement as assets to be liquidated, and plaintiff does not dispute that the claims are related to the bankruptcy proceeding. After the trial court denied plaintiff's motion to reconsider, plaintiff refiled his complaint in the bankruptcy court to "preserve [the claims'] timeliness."

¶ 39 Plaintiff argues that, under 28 U.S.C. § 1334(b), the trial court and the bankruptcy court had concurrent jurisdiction to adjudicate the legal malpractice claims. Furthermore, plaintiff argues that the bankruptcy judge's amendment to the plan, removing the word "exclusive" from section 9.13(ii)(2), further proves that the trial court has concurrent jurisdiction with the bankruptcy court to adjudicate the legal malpractice claims.

¶ 40 Plaintiff is correct that, pursuant to federal law, state courts and bankruptcy courts share concurrent jurisdiction to hear state law cases that are related to bankruptcy proceedings. 28 U.S.C. § 1334(b) (West 2008). However, that is not the end of our analysis.

¶ 41 The Bankruptcy Code states that "the provisions of a confirmed plan bind the debtor." 11 U.S.C. § 1141(a) (West 2008). Furthermore, the United States Court of Appeals for the Seventh Circuit has held that "[a] confirmed plan of reorganization is in effect a contract between the parties and the terms of the plan describe their rights and obligations." *Ernst & Young LLP v. Baker O'Neal Holdings, Inc.*, 304 F.3d 753, 755 (7th Cir. 2002). In other words, the contract is between the debtor and the creditors. In *Ernst & Young*, the plaintiffs "employed the services of Ernst & Young," and entered into "engagement letters," the terms of which required that the parties resolve any controversy or claim arising out of Ernst & Young's services through arbitration. *Ernst & Young*, 304 F.3d at 754. The plaintiffs later filed for bankruptcy relief. *Ernst & Young*, 304 F.3d at 754. Before plaintiffs filed a proposed plan of reorganization, "they initiated adversary proceedings against Ernst & Young" for the purpose of avoiding and recovering fraudulent transfers of property and to seek damages related to claims of professional misconduct. *Ernst & Young*, 304 F.3d at 754-55. Plaintiffs filed a proposed plan of reorganization, then modified it in light of an objection from Ernst & Young. *Ernst & Young*, 304 F.3d at 755. The plan, which was confirmed by the bankruptcy court, stated that "the bankruptcy court retained jurisdiction for the purpose of 'adjudication of any pending adversary proceeding, or other controversy or dispute.' " *Ernst & Young*, 304 F.3d at 755. Ernst & Young filed a motion to dismiss or stay the adversary proceeding against it, citing the arbitration clause

in the engagement letters. The bankruptcy court denied Ernst & Young's motion, and the Seventh Circuit affirmed. *Ernst & Young*, 304 F.3d at 754, 755.

¶ 42 The Seventh Circuit found that a confirmed plan of reorganization is "in effect a contract between the parties and the terms of the plan describe their rights and obligations." *Ernst & Young*, 304 F.3d at 755. The court determined that because the plan "expressly provides for the bankruptcy court to retain jurisdiction *to adjudicate* pending adversary proceedings, controversies, and disputes," Ernst & Young's right to arbitrate was superseded "by the terms of the confirmed plan. (Emphasis in original.) *Ernst & Young*, 304 F.3d at 756. The Seventh Circuit used the Barron's Law Dictionary definition of adjudication, " 'the determination of a controversy and pronouncement of a judgment based on evidence presented, implies a final judgment... as opposed to a proceeding in which the merits of the cause of action were not reached.' " *Ernst & Young*, 304 F.3d at 756 (quoting Barron's Law Dictionary 11 (1996)). The Seventh Circuit found that Ernst & Young could have protected its right to arbitrate by incorporating the arbitration clause of the engagement letters into the plan of reorganization. *Ernst & Young*, 304 F.3d at 756 (citing *In re GWI, Inc.*, 269 B.R. 114, 118 (Bankr. D. Del. 2001) (finding that because the parties expressly adopted arbitration provisions of prepetition agreements into a plan of reorganization, the prior arbitration provisions were enforceable and not superseded by generalized language in the confirmed plan conferring jurisdiction on the bankruptcy court)).

¶ 43 Similarly, in the case at bar, the plan dictates that this case be under the jurisdiction of the bankruptcy court. The plan defines "litigation" as "[t]he causes of action, rights, suits, or

proceedings, whether in law or in equity, whether known or unknown, whether pending or not, that the Debtor, the Debtor's estate, the Litigation Trust or the Reorganized Debtor holds or may hold against any person." Section 9.13(ii)(2) of the plan states that the bankruptcy court "shall retain exclusive subject matter jurisdiction of the Case, and all proceedings arising therein or related thereto, including proceedings that aid the consummation of this Plan such as the following: *** (2) hearing and determining any Litigation irrespective of whether it is brought by the Debtor, the Liquidation Trustee or the Committee." The bankruptcy court amended section 9.13(ii)(2) to remove the word "exclusive," but that does not alter the effect of the plan. Section 9.13(ii)(2) states that the bankruptcy court will retain jurisdiction over "*any* Litigation" (emphasis added), which was broadly defined, and includes the case at bar.

¶ 44 This interpretation of the plan is consistent with the trial court's reasoning for dismissing the case. The trial court asked whether the plan of reorganization was a contract that plaintiff "signed onto and agreed that this matter would be in the bankruptcy court." Plaintiff responded that the plan is a contract, but that the plan cannot divest the trial court of jurisdiction. The trial judge then stated that contracts may contain provisions that "take my jurisdiction away all the time. The parties agree to arbitrate a matter, I let it go. The parties agree to mediate a matter, I let it go. Those are all things parties make agreements on and it goes somewhere else to be resolved." The trial court interpreted the plan as a contract that specified where the parties would litigate claims affecting the bankruptcy estate.

¶ 45 Plaintiff argues that *Ernst & Young* is distinguishable, stating that the Seventh Circuit determined that Ernst & Young waived its right to arbitrate, and that such a waiver is not at issue

here. *Ernst & Young*, 304 F.3d at 756-57. The Seventh Circuit did find that Ernst & Young waived its right to arbitrate the dispute because it was not diligent in asserting its right to arbitrate. *Ernst & Young*, 304 F.3d at 757. No such right is at issue in this case. However, the waiver issue was the second of two findings made by the Seventh Circuit in holding that the matter should proceed in the bankruptcy court. The Seventh Circuit first found that the terms of the plan of reorganization superseded the terms of the letters of engagement. *Ernst & Young*, 304 F.3d at 756. After interpreting the term "adjudicate" in the plan of reorganization, the Seventh Circuit then turned to the waiver issue, stating that "[r]egardless of how we interpret the word 'adjudication' in the plan, Ernst & Young waived any right to arbitrate." *Ernst & Young*, 304 F.3d at 756. The Seventh Circuit need not have reached the waiver issue, as Ernst & Young lost the right to arbitrate because of the language of the plan of reorganization.

¶ 46 Plaintiffs also argue that this court must ignore the Seventh Circuit's interpretation of plans of reorganization as a contract because the bankruptcy court in this matter held that it should not be interpreted as one. First, we note that, although the bankruptcy court's opinion is instructive, it is not binding upon us, as the bankruptcy judge himself notes. Therefore, plaintiff's argument that we "must" interpret the plan in the same manner as the bankruptcy court is not persuasive. Furthermore, we do not find persuasive plaintiff's argument that interpreting a plan of reorganization like a contract is incorrect. The bankruptcy court itself stated that "[m]any, many, many cases describe a confirmed plan as a contract among affected parties," although the bankruptcy court stated that it finds such an analogy "ill-advised." Plaintiff argues that the confirmation plan cannot be interpreted like a contract because unlike contracts, confirmation

plans require a court's approval; a "confirmed plan and all of its effects are creatures of, and derive their impact only from, the court's confirmation order." However, the comparison of confirmed plans to contracts is an analogy, meant to illuminate similarities, rather than to express the idea that both documents are identical. The Seventh Circuit has found that while confirmation orders are certainly not contracts, as they require a court order to go into effect, the analogy is not improper. *Siemens Energy & Automation, Inc. v. Good*, 389 F.3d 741, 744-45 (7th Cir. 2005). In *Siemens*, the parties disputed whether to treat the plan of reorganization like a private contract or a consent decree. *Siemens*, 389 F.3d at 744. The Seventh Circuit noted that each party was able to cite Seventh Circuit precedent to support its interpretation. *Siemens*, 389 F.3d at 744. The party requesting that the plan be interpreted like a contract cited *Ernst & Young*, and the party requesting that the plan be interpreted like a consent decree cited *In re Harvey*, 213 F.3d 318, 321 (7th Cir. 2000). *Siemens*, 389 F.3d at 744. In *Harvey*, the Seventh Circuit held that plans of reorganization are akin to consent decrees rather than *private* contracts. *Siemens*, 389 F.3d at 744 (citing *In re Harvey*, 213 F.3d at 321). The Seventh Circuit then stated that by entering a confirmation order, "it is passing judgment on the plan itself, *giving effect to every provision of that plan* and, in essence, incorporating by reference the entirety of the plan into the judgment." (Emphasis added.) *Siemens*, 389 F.3d at 744. The Seventh Circuit held that the holdings of *Ernst & Young* and *Harvey* "are not necessarily incompatible." *Siemens*, 389 F.3d at 744. "The broad rule of contract interpretation asserted in *Ernst and Young* is uncontroversial and practical: when faced with ambiguous language in a document drafted by private parties (that is, a document that looks like a contract), one should apply the ordinary rules

of contract construction." *Siemens*, 389 F.3d at 744.

¶ 47 Plaintiff argues that interpreting the plan in this manner improperly expands the bankruptcy court's jurisdiction. Plaintiff cites *Kalamazoo Realty Venture Ltd. Partnership v. Blockbuster Entertainment Corp.*, 249 B.R. 879 (N.D. Ill. 2000), to argue that the retention of jurisdiction clause in the plan cannot prevent other courts from hearing a matter related to a bankruptcy proceeding. In *Kalamazoo Realty*, the plaintiff's predecessor-in-interest[3] leased a store to the debtor. *Kalamazoo Realty*, 249 B.R. at 883. The defendants guaranteed the obligations assumed by the debtor under the lease. *Kalamazoo Realty*, 249 B.R. at 883. The parties disputed the relevant facts; the plaintiff alleged that the debtor renewed the lease, then proceeded to default on the lease. *Kalamazoo Realty*, 249 B.R. at 883. The defendants responded that prior to the alleged renewal, the debtor filed for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. *Kalamazoo Realty*, 249 B.R. at 883. The defendants alleged that the Delaware bankruptcy court confirmed a plan of reorganization that included a provision assigning the lease to the defendants and then subleasing the premises back to the debtor. *Kalamazoo Realty*, 249 B.R. at 883. The plaintiff filed a lawsuit against the defendants for breach of guaranty in the United States Bankruptcy Court for the Northern District of Illinois. *Kalamazoo Realty*, 249 B.R. at 883. The debtor also filed a second bankruptcy proceeding in the Delaware federal district court, rather than the Delaware bankruptcy court, which was still pending at the time the Northern District of

[3] Plaintiff succeeded to all of its predecessor-in-interest's rights, title, and interest under the lease prior to any litigation. *Kalamazoo Realty*, 249 B.R. at 883, 883 n.1.

Illinois Bankruptcy Court decided the case. *Kalamazoo Realty*, 249 B.R. at 883.

¶ 48 The defendants filed a motion to dismiss the case under Federal Rule of Civil Procedure 12(b)(1) for lack of jurisdiction. *Kalamazoo Realty*, 249 B.R. at 883. The defendants argued that the Delaware bankruptcy court, where the second bankruptcy case was pending, had exclusive jurisdiction over the matter because the lease at issue was part of the debtor's bankruptcy estate. *Kalamazoo Realty*, 249 B.R. at 884. The court denied the motion, finding that it had jurisdiction because there was no evidence that the lease was part of the debtor's bankruptcy estate at the inception of the second bankruptcy proceeding, and the "fact that the bankruptcy court retained exclusive jurisdiction over matters relating to and parties connected with [the debtor's] first bankruptcy case does not grant it exclusive jurisdiction over the instant case, which involves a state law issue, not a bankruptcy issue." *Kalamazoo Realty*, 249 B.R. at 888.

¶ 49 However, we find *Kalamazoo Realty* to be distinguishable from the instant case. Unlike the instant case, the parties to *Kalamazoo Realty* were the debtor's landlord and the debtor's guarantor, rather than the debtor itself. Furthermore, the court in *Kalamazoo Realty* casts doubt on whether the state law claims at issue would affect the debtor's bankruptcy estate, thus triggering "related to" jurisdiction in the Delaware bankruptcy court. *Kalamazoo Realty*, 249 B.R. at 884-85. The court stated that "the majority of bankruptcy and district courts in the Northern District of Illinois have held that a potential indemnity claim against the debtor *does not necessarily impact estate property*, and therefore does not presumptively confer on the bankruptcy court 'related to' jurisdiction over an otherwise unrelated matter." (Emphasis added.)

Kalamazoo Realty, 249 B.R. at 885. Contrast this with *Diamond*, in which the Seventh Circuit found that a legal malpractice claim, filed by the debtor, was related to an underlying bankruptcy proceeding because the outcome of the claim "may have a direct and substantial impact on the asset pool available for distribution to the estates." *Diamond*, 913 F.2d at 1239.

¶ 50 The *Kalamazoo Realty* court stated that bankruptcy courts retain jurisdiction over matters after confirming reorganization plans to " 'interpret, apply, and enforce a plan confirmed under its jurisdiction.' " *Kalamazoo Realty*, 249 B.R. at 887 (quoting *In re Kewanee Boiler Corp.*, 198 B.R. 519, 525 (Bankr. N.D. Ill. 1996)). " 'Simply put, bankruptcy courts must retain jurisdiction to construe their own orders if they are to be capable of monitoring whether those orders are ultimately executed in the intended manner.' " *Kalamazoo Realty*, 249 B.R. at 887 (quoting *In re Franklin*, 802 F.2d 324, 326 (9th Cir. 1986)). The court stated that bankruptcy courts "usually invoke this narrow post-confirmation jurisdiction to 'ensure that reorganization plans are implemented... and to protect estate assets devoted to implement the confirmed Plan.' " *Kalamazoo Realty*, 249 B.R. at 887 (quoting *In re Schwinn*, 210 B.R. 747, 754-55 (Bankr. N.D. Ill. 1997)). The *Kalamazoo Realty* court held that neither party argued that the debtor's reorganization plan had been violated, but rather that the parties were arguing matters of state law. *Kalamazoo Realty*, 249 B.R. at 887. Although a legal malpractice action can be brought in a state court as well as a federal court, defendants argue that filing the case in the circuit court of Cook County violated the plan. Furthermore, unlike in *Kalamazoo Realty*, in which the court expressed doubt that the outcome of the state law claim would have an effect on the debtor's bankruptcy case, the outcome of the instant case could have an effect on the assets available in

Heartland's bankruptcy estate. *Kalamazoo Realty*, 249 B.R. at 884-85.

¶ 51 The plan of reorganization specifically stated that the bankruptcy court would retain jurisdiction over all litigation. The plan clearly and unequivocally provided that all litigation would be under the jurisdiction of the bankruptcy court. Since the bankruptcy court retained jurisdiction over all litigation, plaintiff was required to obtain bankruptcy court approval before he could file litigation in the state court, and in doing so was further required to follow the directions of the plan in bringing the legal malpractice case in the name of Heartland.

¶ 52 III. Standing

¶ 53 Having found that the trial court lacked the jurisdiction to hear this matter, we need not reach the standing issue.

¶ 54 CONCLUSION

¶ 55 The plan of reorganization clearly and unequivocally stated that the bankruptcy court retained jurisdiction over all litigation. Therefore, plaintiff had no choice but to file Heartland's legal malpractice lawsuit in the bankruptcy court in the name of Heartland, which he has since done.

¶ 56 Affirmed