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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-400 / 89-1736

EMMA TRUMBO,

Plaintiff-Appellant,

312

vs.

WILLIAM S. MORRIS and **MORRIS, SPROLE & MORRIS,**

Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Plaintiff appeals an order granting defendants summary judgment. **AFFIRMED.**

Joseph B. Joyce of Adler, Brennan & Joyce, Des Moines, for appellant.

William S. Morris, Des Moines, for appellees.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

PER CURIAM

This appeal follows the entry of a summary judgment in a legal malpractice action. On February 13, 1989, plaintiff-appellant Emma Trumbo sued defendants-appellees William S. Morris & Morris, Sprole & Morris, contending defendants undertook to represent her on a claim against the Des Moines School District but allowed the statutory period for making the claim to expire.

Defendants filed a motion for summary judgment, contending Morris, Sprole & Morris is merely a list of names of single attorney practitioners practicing individually at the same address. They also alleged that John F. Sprole and James B. Morris, III never counseled plaintiff or gave her any legal advice. The motion further alleged plaintiff's attorney was notified on December 23, 1988, that defendant William S. Morris was in bankruptcy. Defendants recited plaintiff made no filing in the bankruptcy for relief from the automatic stay and filed no claim in the bankruptcy. Defendant William S. Morris claims the debt, if any, was discharged in the bankruptcy. Defendants also contend there were insufficient facts in the plaintiff's petition to identify an act of malpractice. Plaintiff's only resistance to the motion was a general denial of the motion and an allegation that defendant William S. Morris's bankruptcy had no bearing on plaintiff's claim. The trial court granted summary judgment.

The trial court found there was no evidence showing Morris, Sprole & Morris was an entity that could be responsible for the acts of William S. Morris, and the uncontradicted evidence was that William S. Morris was a sole practitioner sharing office space with the other two lawyers. The trial court also found the uncontroverted facts were that plaintiff's attorney had been notified of William S. Morris's bankruptcy on December 23, 1988, and that plaintiff did not deny knowledge of the bankruptcy. The trial court further found that plaintiff's petition was filed on February 13, 1989, while the automatic stay of the bankruptcy was in effect, the stay having been in effect from September 30, 1988 to March 10, 1989.

Plaintiff contends that (1) defendants' motion for summary judgment was in the form of a speaking demurrer unsupported except by inadmissible copies of letter between the parties' counsel, and (2) the claim was not discharged in bankruptcy because plaintiff was not listed as a creditor.

To be successful on a motion for summary judgment, the moving party must demonstrate the absence of any genuine issue of material fact and show that he or she is entitled to judgment as a matter of law. Hall v. Barrett, 412 N.W.2d 648, 650 (Iowa App. 1987). We examine the record in the light most favorable to the plaintiff to determine if the defendants' burden has been met. Id. A motion for

summary judgment should not be granted if reasonable minds can differ as to how the issue should be resolved. Steinbach v. Meyer, 412 N.W.2d 917, 918 (Iowa App. 1987).

A motion for summary judgment is not supported as required by rule 237 of the Iowa Rules of Civil Procedure unless the movant meets his or her burden to show there is no genuine fact issue. Mead v. Lane, 203 N.W.2d 305, 306-07 (Iowa 1972). Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented. Mead, 203 N.W.2d at 307. All the evidence must be viewed in the light most favorable to the party resisting the summary motion. Liska v. First National Bank in Sioux City, 310 N.W.2d 531, 534 (Iowa App. 1981).

The fact that the defendants were not an entity, that defendant William S. Morris had filed for bankruptcy, that plaintiff's attorney was aware of the bankruptcy, and that this lawsuit was filed while the bankruptcy was pending are established and undisputed. Plaintiff's knowledge of the bankruptcy negates her argument she did not have notice.

The filing of a petition in bankruptcy operates as a stay. See 11 U.S.C.A. § 362. These provisions are automatic and self-operating, and those who have knowledge of the pendency of a bankruptcy action and stay are bound to honor the stay unless and until it is properly lifted.

See NLT Computer Service v. Capital Computer Systems, 755 F.2d 1253, 1258 (6th Cir. 1985). See also Clay v. Johns-Manville Sales Corp., 722 F.2d 1289, 1290-91, cert. denied 467 U.S. 1252, 104 S. Ct. 3537, 82 L. Ed. 2d 842 (1984). The general rule is that actions taken in violation of the automatic stay are void. In re Sambo's Restaurants, Inc., 1754 F.2d 811, 816 (9th Cir. 1985). We affirm.

AFFIRMED.