

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

RADNOR HOLDINGS CORPORATION,	)	Chapter 11
MICHAEL T. KENNEDY, MTK TRUST	)	Case No. 06-10894 (PJW)
FBO RYAN KENNEDY, MTK TRUST FBO	)	(Jointly Administered)
SEAN M. KENNEDY, MTK TRUST FBO	)	
MICHAELA C. KENNEDY, MTK TRUST	)	
FBO CONOR R. KENNEDY,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adv. No. 12-51308 (PJW)
	)	
SKADDEN ARPS MEAGER & FLOM LLP;	)	
SK PRIVATE INVESTMENT FUND	)	
1998 LLC; RICHARD T. PRINS,	)	
ESQUIRE; GREGG M. GALARDI,	)	
ESQUIRE; TENNENBAUM & CO LLC;	)	
TENNENBAUM CAPITAL PARTNERS,	)	
LLC; BABSON & CO. LLC; SPECIAL	)	
VALUE EXPANSION FUND, LLC;	)	
SPECIAL VALUE OPPORTUNITIES	)	
FUND, LLC; MICHAEL E. TENNEN-	)	
BAUM; SUZANNE S. TENNENBAUM;	)	
DAVID A. HOLLANDER; MARK K.	)	
HOLDSWORTH; HOWARD M.	)	
LEVKOWITZ; RICHARD E. SPENCER;	)	
JOSE FELICIANO; ALVAREZ &	)	
MARSAL, INC. and STANFORD M.	)	
SPRINGEL,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION**

Michael T. Kennedy  
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Radnor, PA 19087

On Behalf of Plaintiffs,  
Michael T. Kennedy,  
Radnor Holdings Corporation,  
et al. And the Kennedy  
Family Trusts for the  
benefit of the Kennedy  
Children

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Defendants

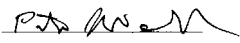
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Suzanne S. Tennenbaum,  
David A. Hollander, Mark K.  
Holdsworth, and Howard M.  
Levkowitz

Dated: October 14, 2014

**WALSH, J.** 

This opinion is with regard to Plaintiffs' Motion, Pursuant to 28 U.S.C. § 157 (b) (3) and Del. Bankr. L.R. 5011-1, For the Entry of an Order Determining that Causes of Actions Under the Adversary Proceeding are Non-Core. (Doc. # 55.) For the reasons described below, the Court finds that causes of action in this adversary proceeding include core proceedings.

### **Background**

The Complaint is 327 paragraphs long and covers ten separate counts. These counts are: breach of fiduciary duties, fraud, conspiracy to commit fraud, malpractice, perjury, unjust enrichment, obstruction of justice, breach of contract, tortuous interference, and theft by deception. According to the Complaint, "this cause of action arises from false testimony, misrepresentation, non-disclosure, willful misconduct, gross negligence and deception committed by Defendants individually and in concert with each other and before the Honorable Peter J. Walsh for the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") to the detriment of Radnor and Kennedy." (Pl. Am. Compl. ¶ 22.)<sup>1</sup>

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<sup>1</sup>While not related to the matter addressed here, I believe it important to note that at the September 22, 2014 status conference, Mr. Kennedy observed: "I don't consent to a jury trial in the Bankruptcy Court." (Tr. p. 18, line 25-p.19, line 1.) This Court has no authority to conduct a jury trial.

### Discussion

The allegations in Plaintiff's Complaint are primarily based on post-petition conduct *arising in* the Bankruptcy Case and *arising under* the Bankruptcy Code. I note the following allegations in the Complaint:

The Defendants have exhibited a consistent "pattern of deceit" and a propensity to conspire amongst themselves and commit fraud, culminating with their acts of deception and manipulation as well as a callous indifference to fiduciary duties and the **bankruptcy laws** as demonstrated by their conduct **before the Bankruptcy Court**.

(emphasis added) (Pl. Am. Compl. ¶206.)

Galardi's glaring misrepresentations and inconsistent statements made to the **Bankruptcy Court**, additional undisclosed conflicts of Skadden including investment in the Tennenbaum Funds, and the extent of the manipulation by the Defendants.

(emphasis added) (Pl. Am. Compl. ¶209.)

Skadden not only failed to disclose material and adverse relationships with Tennenbaum and other parties involved in **the bankruptcy proceedings**, Skadden took affirmative steps to attempt to hide its relationship with Tennenbaum from Kennedy, the Radnor board, the US Trustee and **the Bankruptcy Court**.

(emphasis added) (Pl. Am. Compl. ¶227.)

Before and **during the bankruptcy proceeding**, Skadden misled and deceived Kennedy, in concert with Tennenbaum, by failing to disclose material and adverse connections and conflicts between Skadden, Silver Point, A&M and Tennenbaum, by making false statements, by filing false affidavits and motions with **the Bankruptcy Court**, by obstructing Kennedy's efforts to reorganize Radnor, and by participating in the theft of Kennedy's property and the breach of Kennedy's employment agreement.

(emphasis added) (Pl. Am. Compl. ¶228.)

The Defendants failed to fulfill their duties of loyalty, care and candor by willfully failing to disclose material facts to Kennedy, Radnor, and **the Bankruptcy Court** and by failing to notify **the Bankruptcy Court** that the testimony of the professionals was intentionally misleading and false.

(emphasis added) (Pl. Am. Compl. ¶239.)

As officers of **the Bankruptcy Court**, Skadden attorneys violated their duties of candor and honesty to Radnor, Kennedy, **the Bankruptcy Court** and the US Trustee.

(emphasis added) (Pl. Am. Compl. ¶243.)

Skadden failed to fulfill its responsibility to advocate on behalf of and assist Radnor with refinancing its obligations and restructuring its debt by deceiving Radnor, Kennedy, and **the Bankruptcy Court**.

(emphasis added) (Pl. Am. Compl. ¶244.)

By making false statements and proffering misleading testimony before **the Bankruptcy Court**, filing false affidavits and by concealing true and material conflicts, Skadden committed fraud **upon the Bankruptcy Court** and interfered with the process of adjudication.

(emphasis added) (Pl. Am. Compl. ¶245.)

The lack of disclosure of material facts and conflicts, the absence of fair dealing and the inadequacy of the purchase price for the Radnor assets undercuts the entire sale process approved by **the Bankruptcy Court**.

(emphasis added) (Pl. Am. Compl. ¶246.)

Feliciano breached his fiduciary duty of care owed to Radnor by, among other things, approving the retention of Skadden, Lehman and A&M while failing to disclose material connections and conflicts to Kennedy, the Radnor Board and **the Bankruptcy Court**.

(emphasis added) (Pl. Am. Compl. ¶249.)

The Defendants repeatedly made false statements of material fact to Kennedy, representatives of Radnor, **the Bankruptcy Court**, the US Trustee and other individuals associated

(emphasis added) (Pl. Am. Compl. ¶256.)

The Defendants each acted with the intent to deceive Kennedy, Radnor, **the Bankruptcy Court**, the US Trustee and other parties involved with **the bankruptcy case** and with intent to deprive Kennedy and Radnor of their respective rights.

(emphasis added) (Pl. Am. Compl. ¶258.)

The Defendants failed to disclose material facts to Radnor, Kennedy, **the Bankruptcy Court**, the US Trustee and other individuals involved with **the bankruptcy case**.

(emphasis added) (Pl. Am. Compl. ¶260.)

By making false statements to Kennedy, proffering misleading testimony before **the Bankruptcy Court**, filing false affidavits and concealing true and material conflicts, Defendants committed fraud **upon the Bankruptcy Court** and interfered with the process of adjudication.

(emphasis added) (Pl. Am. Compl. ¶266.)

The Defendants' scheme exhibits a propensity to commit fraud and a pattern of deceit and their willful, purposeful, unlawful acts demonstrate a vast conspiracy among the Defendants. The Defendants knowingly and intentionally committed fraud upon Kennedy, **the Bankruptcy Court** and other creditors and parties in interest."

(emphasis added) (Pl. Am. Compl. ¶267.)

The Defendants knew or reasonably should have known that there was a very high risk that Lehman and Skadden would be disqualified if the conflicts described herein were disclosed to **the Bankruptcy Court** or the US Trustee. Skadden and Tennenbaum failed to

make the appropriate disclosures required in attorney-client relationships **under the Bankruptcy Code.**

(emphasis added) (Pl. Am. Compl. ¶270.)

The Defendants acted together based on an agreement or series of agreements to perpetrate fraud on Radnor, Kennedy, and **the Bankruptcy Court.**

(emphasis added) (Pl. Am. Compl. ¶273.)

The Defendants collective actions violated the law, **the rules of the Bankruptcy Court** and applicable rules of professional conduct.

(Pl. Am. Compl. ¶275.)

The evidence clearly demonstrates that Skadden misled the Radnor board, Kennedy, breached their duties of candor and loyalty to the Plaintiffs as a client and violated their trust by conspiring with Tennenbaum, failing to disclose the nature of Skadden's relationship with Tennenbaum, failing to disclose other material conflicts and connections, making false and misleading statements to Kennedy, the Radnor board, the US Trustee and **the Bankruptcy Court...**

(emphasis added) (Pl. Am. Compl. ¶281.)

The Complaint unequivocally addresses matters in the bankruptcy case. In my view, these include "matters concerning the administration of the estate." 28 U.S.C. § 157(b)(2)(A).

### **Conclusion**

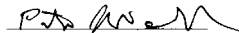
For the reasons described above, the causes of action in the adversary proceeding includes core proceedings.

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MARSAL, INC. and STANFORD M.	)	
SPRINGEL,	)	
	)	
Defendants.	)	

**ORDER**

For the reasons set forth in the Court's memorandum opinion of this date, this adversary proceeding includes core proceedings. **SO ORDERED.**



Peter J. Walsh  
United States Bankruptcy Judge

Dated: October 14, 2014