

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GEORGE LEWIS, :
 :
 Plaintiff, :
 :
 v. :
 :
 PORTFOLIO RECOVERY ASSOCIATES :
 LLC, :
 :
 Defendant. :

Civ. Action No. 15-2412(FLW)

OPINION

WOLFSON, District Judge:

Plaintiff George Lewis (“Plaintiff” or “Lewis”) initiated this suit against Defendant Portfolio Recovery Associates, LLC (“PRA” or “Defendant”), for allegedly sending Plaintiff a misleading and confusing debt collection letter in violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*, and New Jersey Truth in Consumer Contract Warranty and Notice Act (the “NJ Consumer Act”). In the instant matter, Defendant moves to dismiss the Complaint based on, *inter alia*, Plaintiff’s failure to schedule this lawsuit as an asset of his bankruptcy estate, which, according to Defendant, deprives Plaintiff of standing to bring his claims. Because the Court is satisfied that Plaintiff lacks standing, Defendant’s motion is **GRANTED**, and the Complaint is **DISMISSED**.

BACKGROUND AND PROCEDURAL HISTORY

Because Defendant’s standing argument is a factual challenge to this Court’s subject matter jurisdiction, I am permitted to look beyond the Complaint to evidence concerning jurisdiction. *See Gould Elecs. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000). On or about March 2, 2015, Lewis filed this lawsuit in state court against Defendant seeking damages for alleged violations of

the FDCPA and the NJ Consumer Act. In the Complaint, Lewis alleges that Defendant sent him a letter on or about May 6, 2014, in an attempt to collect a debt. Complaint, ¶ 4. Plaintiff avers that the letter contains “mini-Miranda” notification in a box entitled “Account details.” *Id.* However, according to Plaintiff, by “mislabeling the Debtor’s legal rights as ‘Account Details’ the creditor’s correspondence is misleading and designed to build [confusion] in the debtor’s mind as to the nature of the debt and the nature of the debtor’s rights.” *Id.* Without answering the Complaint, Defendant removed the matter to this Court, and has moved to dismiss the Complaint, before me, based on standing.

Crucial to the standing issue is Plaintiff’s bankruptcy petition under Chapter 7 of the United States Bankruptcy Code, which Plaintiff filed on August 8, 2014, months before he initiated the present action against Defendant. *See* Bankruptcy Petition dated August 8, 2014. On November 6, 2014, the Chapter 7 Trustee appointed in Plaintiff’s bankruptcy proceedings, issued a report of no distribution, and on November 14, 2014, Plaintiff received his discharge. *See* Discharge of Debtor dated November 14, 2014. Based on the events that occurred during Plaintiff’s bankruptcy proceedings, in its motion to dismiss, Defendant argues, *inter alia*, that Plaintiff lacks standing to sue because he failed to schedule this particular lawsuit as a personal asset. I will turn to that discussion.

DISCUSSION

I. Standard of Review

A defendant may move to dismiss a claim for lack of subject matter jurisdiction under Federal Rule of Civil Procedure Rule 12(b)(1). Once a Rule 12(b)(1) challenge is raised, the plaintiff bears the burden of demonstrating the existence of subject matter jurisdiction. *See McCann v. Newman Irrevocable Trust*, 458 F.3d 281, 286 (3d Cir. 2006). A Rule 12(b)(1) motion

to dismiss is treated as either a "facial or factual challenge to the court's subject matter jurisdiction." *Gould Elecs.*, 220 F.3d at 176. Under a facial attack, the movant challenges the legal sufficiency of the claim, and the court considers only "the allegations of the complaint and documents referenced therein and attached thereto in the light most favorable to the plaintiff." *Id.* Here, the matter concerns a factual challenge to subject matter jurisdiction based on standing. *See Ballentine v. United States*, 486 F.3d 806, 810 (3d Cir. 2007).

II. Standing

Section 541(a)(1) of title 11 of the United States Code provides that a bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." *In re Allen*, 768 F.3d 274, 281 (3d Cir. 2014) (citing 11 U.S.C. § 541(a)(1)). In that regard, the scope of 11 U.S.C. § 541(a)(1) is broad, and it includes possible causes of legal action. *Id.* Indeed, it is the duty of the debtor to disclose all pre-petition assets that become a part of the bankruptcy estate. *See* 11 U.S.C. § 521(1) ("the debtor shall file...a schedule of assets and liabilities...and a statement of the debtor's financial affairs..."); Collier on Bankruptcy, 15th Edition Rev. §521.06[3][a] ("Possible causes of action belonging to the debtor should be listed, even if the likelihood of success is unknown"). And, the debtor has an ongoing affirmative obligation to disclose all its assets and liabilities to the bankruptcy court in its petition and before discharge, including pending and contingent claims. Fed. R. Bank. P. 1007(b)(I); 11 U.S.C. §§ 521(a)(1), 541(a)(1); *Hamilton v. State Farm Fire & Cas. Ins. Co.*, 270 F.3d 778, 785 (9th Cir. 2001). Importantly, a failure to list an asset as property of the bankruptcy estate does not prevent it from becoming property of the estate. 11 U.S.C. § 554(d); *Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233, 241 (3d Cir. 2001); *In re Lopez*, 283 B.R. 22, 28 (9th Cir. BAP 2002) (finding that by the operation of the Bankruptcy Code, debtor's assets, including any possible cause of

action, become “property of the bankruptcy estate as of the Petition Date, even though [they may not be] listed in the schedules, and property that is neither abandoned nor administered remains property of the estate even after the case is closed.”).

Once an asset becomes part of the bankruptcy estate, all rights held by the debtor in the asset are extinguished unless the asset is expressly and unequivocally abandoned back to the debtor. *See* 11 U.S.C. § 554(a)-(c). In a situation where a bankruptcy trustee is appointed, such as in this case, that trustee becomes the representative of the estate and succeeds to the debtor's right to pursue causes of action which are the property of the estate. 11 U.S.C. § 323(a); *see In re Alcala*, 918 F.2d 99, 102 (9th Cir.1990). “[A] chapter 7 trustee can . . . prosecute [an action], settle it, abandon it, or arrange for [the debtor] to prosecute it in exchange for the estate receiving a share of the proceeds.” *See In re Lopez*, 283 B.R. at 28. In other words, once an estate is created, the trustee has sole and exclusive authority to pursue claims on behalf of the estate. *See In re Dionisio*, 2003 U.S. App. LEXIS 12432, at *5 (3d Cir. 2003); *see In re Truong*, 2006 Bankr. LEXIS 4525, at *11 (Bankr. D.N.J. May 3, 2006) (“[A] trustee is granted complete authority and discretion with respect to the prosecution and defenses of any litigation of the debtor's estate.”). In that connection, at the close of the bankruptcy case, any estate property not abandoned or administered in the bankruptcy proceedings by the trustee remains the property of the bankruptcy estate. *See* 11 U.S.C. § 554. Conversely, if a pre-petition claim is properly scheduled and a trustee does not pursue the claim prior to discharge of the bankruptcy petition, that claim is abandoned to the debtor upon discharge. *See* 11 U.S.C. § 554(c).

Importantly, in cases where a debtor attempts to bring a cause of action for a pre-petition claim that was not disclosed in the bankruptcy proceeding, the debtor lacks standing because pre-petition claims belong to the bankruptcy trustee. *Schafer v. Decision One Mortg. Corp.*, 2009 U.S.

Dist. LEXIS 56639, at *12 (E.D. Pa. Jul. 1, 2009); *In re Dionisio*, 2003 U.S. App. LEXIS at *5; *Parker v. Wendy's International, Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004) (“Failure to list an interest on a bankruptcy schedule leaves that interest in the bankruptcy estate.”). For a debtor to regain standing, the trustee must abandon the claim, whether voluntarily or pursuant to a court order. *See* 11 U.S.C. § 554(a)-(b); *Barris v. Midland Funding, LLC*, 2015 U.S. Dist. LEXIS 14969, *5 (D.N.J. Feb. 9, 2015).

Here, there is no dispute that events that led to Plaintiff’s FDCPA and NJ Consumer Act claims occurred in May 2014, and that Plaintiff filed for bankruptcy in August 2014. Based on that timing, Plaintiff’s claims, which are the subject of this lawsuit, would constitute a pre-petition cause of action that must be listed as an asset by Plaintiff in his “schedule of assets and liabilities” of his bankruptcy petition. *See* 11 U.S.C. § 521(1). Plaintiff argues that his claim were in fact listed in his petition. However, a review of that petition reveals that under the subheading “*Other personal property of any kind not already listed,*” of the Personal Property section of the petition, Plaintiff merely listed “lawsuits” as a joint marital asset worth \$5,000. This is inadequate to meet the requirements under the Bankruptcy Code. Indeed, Plaintiff failed to disclose against whom his lawsuits were directed, or the specific type of claim being asserted, i.e., FDCPA or NJ Consumer Act. A generic designation of “lawsuits” is not adequate to notify the Trustee as to who the Trustee should pursue and what causes of action should be brought. *See, e.g., Tennyson v. Challenge Realty*, 313 B.R. 402 (Bankr. W.D. Ky. 2004)(finding that identification of an cause of action must include the specific claim against a certain defendant).

Accordingly, because Plaintiff neither properly listed his FDCPA and NJ Consumer Act claims against Defendant as an asset on his bankruptcy schedules, nor demonstrates that the trustee voluntarily abandoned any estate property, these causes of action remain part of the bankruptcy

estate. *See, e.g., Tilley v. Anixter Inc.*, 332 B.R. 501, 508 (D. Conn. 2005) ("A trustee may abandon scheduled property, i.e., property that has been listed on the bankruptcy petition, either through procedures requiring notice and a hearing, 11 U.S.C. § 554(a) & (b), or by failing to administer it before the close of the bankruptcy case, *id.* at § 554(c). Unscheduled property, in contrast, can never be abandoned without the notice and hearing required in sections 554(a) and (b)."); *Barris*, 2015 U.S. Dist. LEXIS 14969 at *5. As a consequence, Plaintiff lacks standing to pursue his claims here, and the Trustee has the exclusive authority to dispose of or control property of the bankruptcy estate, including Plaintiff's claims against Defendant.

DATE: November 12, 2015

/s/ Freda L. Wolfson
Freda L. Wolfson
United States District Court