

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 18th day of October, 2018.

Present: All the Justices

Marc R. Labgold, Appellant,

against Record No. 171640
Circuit Court No. CL16002964

Linda D. Regenhardt, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Alexandria.

Appellant Marc R. Labgold challenges the circuit court’s judgment dismissing his legal malpractice complaint against appellees Linda D. Regenhardt and Linda Regenhardt, LLC (collectively “Regenhardt”), upon sustaining appellees’ plea in bar for lack of standing. In doing so, the court also denied Labgold’s motion to amend his complaint, ruling that an amendment would be futile. Concluding that Labgold does have standing to pursue his claim, we reverse and remand.

Labgold’s legal malpractice claim arises from Regenhardt’s representation of Labgold in his Chapter 7 bankruptcy action filed in the United States Bankruptcy Court for the Eastern District of Virginia. Based on an adversary complaint brought by the U.S. Trustee in that proceeding, the bankruptcy court denied Labgold a bankruptcy-discharge after finding that Labgold fraudulently transferred his home within a year of the filing of his Chapter 7 bankruptcy petition. During that time, the home, which Labgold owned separately, was transferred through a deed of gift to himself and his newlywed wife as tenants by the entirety with right of survivorship (the “marital residence”). However, Labgold’s bankruptcy petition, which was prepared and filed for him by Regenhardt, inaccurately listed this marital residence as exempt property and indicated that Labgold had not transferred property within the past two years. Labgold alleges in his complaint that, as a result of Regenhardt’s multiple tortious breaches of duty as Labgold’s legal counsel in the form of negligent acts and omissions in dealing with the

marital residence in relation to Labgold's bankruptcy case, Labgold sustained significant damages. Those damages allegedly included, inter alia, the non-discharge of unsecured debts in excess of \$600,000.

"The commencement of a voluntary bankruptcy case creates an estate generally consisting of the 'legal or equitable interests of the debtor in property as of the commencement of the case.'" *In re Witko*, 374 F.3d 1040, 1042 (11th Cir. 2004) (quoting 11 U.S.C. § 541(a)(1)). This means that "[p]re-petition causes of action are part of the bankruptcy estate [whereas] post-petition causes of action are not." *Id.* So unlike post-petition causes of action, which belong to the bankruptcy claimant, pre-petition causes of action are property rights of the bankruptcy estate "vested . . . in the Bankruptcy Trustee as a matter of law." *Shipman v. Kruck*, 267 Va. 495, 503 (2004) (citing 11 U.S.C. §§ 541, 542, 544, 704 (2000)). Accordingly, "[i]f a cause of action is part of the estate of the bankrupt then the trustee alone has standing to bring that claim." *Id.* at 503-04 (quoting *National Am. Ins. Co. v. Ruppert Landscaping Co.*, 187 F.3d 439, 441 (4th Cir. 1999)).

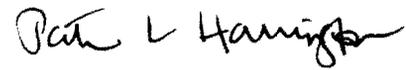
The dispositive issue in the present case is whether Labgold has standing to bring his legal malpractice claim against Regenhardt arising from their representation of Labgold in his bankruptcy case ending in non-discharge. Regenhardt argued below in support of their plea in bar, and the circuit court agreed, that all of Labgold's allegations of tortious breach of duty and damages arising therefrom amounted to pre-petition causes of action, thus negating Labgold's standing in this case. We reject this reading of Labgold's complaint. To be sure, Labgold alleges pre-petition breaches for which he does not have standing to assert, consisting of his allegation that "Defendants breached their duties by improperly completing the Chapter 7 petition in several ways, the most problematic being that Defendants failed to disclose the transfer of the [marital] residence on the petition and, instead, claimed it as exempt." Labgold goes on to allege, however, that "Defendants further breached their duties by . . . failing to advise Dr. Labgold that he could and should submit a revised petition disclosing the transfer . . . ;" and by "not properly advising [him] to . . . have Mrs. Labgold disavow the transfer of the [marital] residence or have her transfer it back" Furthermore, in his motion for leave to amend his complaint, Labgold proffered a number of additional allegations of post-petition breaches of duty by Regenhardt for which Labgold allegedly sustained significant damages arising from those alleged post-petition breaches of duty.

For these reasons, we reverse the circuit court's judgment dismissing Labgold's complaint for lack of standing and remand the case for further proceedings consistent with this order.

This order shall be certified to the Circuit Court of the City of Alexandria.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "Patricia L. Hamilton". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.

Clerk