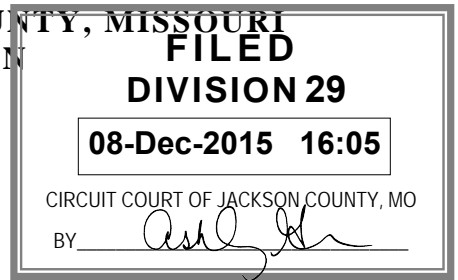


**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
ASSOCIATE COURT DIVISION
AT KANSAS CITY**



GLEND A HOWELL)
Plaintiff,)
))
v.)
))
KING'S QUARTERS APARTMENT)
AKA SUNDANCE BAY PROPERTY)
MGMT)
Defendant.)

**Case No. 1516-CV21504
Division 29**

SMALL CLAIMS ORDER OF DISMISSAL

Comes now the Court and takes up Defendant's *Motion for Dismissal of Plaintiff's Claims with Prejudice* and Defendant's *Memorandum in Support of Their Motion for Dismissal of Plaintiff's Claims with Prejudice* [hereinafter Memorandum], filed with the Court on November 30, 2015. The Court has also reviewed Plaintiff's *Petition Small Claims Court*, filed with the Court on October 8, 2015, and additional correspondence filed by Plaintiff on November 17, November 30, December 4, and December 8, 2015. The Court, having reviewed the file in this case and Defendant's motion to dismiss, finds that the interests of justice would be served by granting Defendant's motion.

Plaintiff's claim in this case is barred by judicial estoppel. "Judicial estoppel applies to prevent litigants from taking a position in one judicial proceeding, thereby obtaining benefits from that position in that instance and later, in a second proceeding, taking a contrary position in order to obtain benefits from such a contrary position at that time." *Strable v. Union Pac. R.R. Co.*, 396 S.W.3d 417, 421 (Mo. App. E.D. 2013) (quoting *Vinson v. Vinson*, 243 S.W.3d 418, 422 (Mo. App. E.D. 2007)). A debtor in a bankruptcy proceeding has an "affirmative duty to disclose all assets, including contingent and unliquidated claims." *Id.* at 422 (quoting *In re Coastal Plains, Inc.*, 179 F.3d 197, 207-08 (5th Cir. 1999)). Failure to disclose potential claims to the bankruptcy estate "warrants the

imposition of judicial estoppel.” *United States ex rel. Gebert v. Transp. Admin. Servs.*, 260 F.3d 909, 917 (8th Cir. 2001).

In her small claims Petition, Plaintiff alleged that her claim arose on or about November 3, 2014. Plaintiff filed for Chapter 7 bankruptcy on April 7, 2015, and was discharged from bankruptcy on July 15, 2015. (Defendant’s Memorandum, Exhibit A). While Plaintiff did disclose in the bankruptcy schedules information relating to Defendant, including that Defendant was holding Plaintiff’s security deposit and that she and Defendant had a lease agreement, Plaintiff did not disclose any interest in a claim against Defendant for property damage that occurred on or about November 3, 2014. (Defendant’s Memorandum, Exhibit A). She also did not disclose any property damage claim in her amended Schedule of Personal Property filed on May 19, 2015. (Defendant’s Memorandum, Exhibit B). To allow Plaintiff to proceed with her small claims case for a claim that arose prior to her filing of bankruptcy would result in Plaintiff receiving the benefits of any award from this litigation while excluding her creditors from receiving the benefits. Therefore, the Court finds that Plaintiff is judicially estopped from bringing her small claims case due to the discharge of her debts in her bankruptcy proceeding.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant’s motion is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff’s case is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

December 8, 2015
DATE


JANETTE RODECAP, JUDGE

NOTICE

THE JUDGMENT RENDERED HEREIN WILL BE FINAL UNLESS AN APPLICATION FOR TRIAL DE NOVO IS FILED WITHIN TEN DAYS. AN APPLICATION FOR TRIAL DE NOVO WILL NOT STAY EXECUTION UNLESS THE TRIAL DE NOVO BOND IS FILED AS SET OUT IN SECTION 482.365 RSMo. (Rule 151.02 Missouri Rules of Civil Procedure).

IF YOU WIN:

- (1) If the Court has awarded you money, contact the opposing party to see if the party will pay.
- (2) Wait ten days from the day of the Court's decision. If the losing party has not paid the judgment voluntarily or appealed, contact the Clerk of the Small Claims Division to obtain forms to start collection proceedings.

IF YOU LOSE:


- (1) You have ten days from the date of the Court's decision to appeal. If you wish to appeal, contact the Clerk of the Small Claims Division. If you are an LLC or Corporation, you will be required to have an attorney in the event of an appeal.
- (2) If you do not file your appeal and post appeal costs and fees within **ten days**, the decision of the Court will be final.
- (3) If you want to pay the judgment, contact the winning party and make arrangements to pay.

To protect your credit rating, have the winning party sign a Satisfaction of Judgment form, which is available from the Clerk of the Small Claims Division, and file it with the Clerk.

Certificate of Service

This is to certify that a copy of the foregoing was hand delivered/faxed/mailed/mailed and/or sent through the eFiling system to the following on the 8th day of December:

Glenda Howell, Plaintiff, 11315 Grandview Road, Kansas City, MO 64137
Rex Redlingshafer, Attorney for Defendant



Law Clerk