

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
JASON R. DYKEN,) Case No. 21-10038
)
Debtor.)

ORDER GRANTING MOTION FOR LEAVE NUNC PRO TUNC

The court has reviewed the briefs filed by the parties and the applicable law and held a hearing on June 13, 2023. Having done so, for the reasons discussed below, the court grants the motion for leave (doc. 270) filed by debtor Jason R. Dyken and his wife Renee Dyken related to counterclaims against the chapter 7 trustee in the case no. 20-CV-297, pending in the United States District Court for the Southern District of Alabama. But the Dykens may proceed against the trustee in her official capacity only and only on Jason Dyken’s declaratory judgment claim and Alabama Litigation Accountability Act claim against the trustee and Renee Dyken’s Alabama Litigation Accountability Act against the trustee.

Under the rule known as the “*Barton* doctrine,” a debtor such as Jason Dyken or an interested party such as his wife “must obtain leave from the bankruptcy court before initiating an action in district court when that action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor’s official capacity.” *See Carter v. Rodgers*, 220 F.3d 1249, 1252 (11th Cir. 2000). The doctrine “helps ensure the proper functioning of the bankruptcy process[.]” *See Lawrence v. Goldberg*, 573 F.3d 1265, 1269 (11th Cir. 2009). The bankruptcy court should “ordinarily allow the lawsuit to proceed unless it is clear that the claim is without foundation.” *See Conway v. Smith Dev., Inc.*, 64 F.4th 540, 542 (4th Cir. 2023) (citation and quotation marks omitted); *see also generally In re VistaCare Grp., LLC*, 678 F.3d 218 (3d Cir. 2012).

The Dykens' counterclaims relate to the trustee's fraudulent transfer claims against them in district court. Those claims are within *Barton's* scope "because they are 'related to' [Jason Dyken's pending] bankruptcy proceeding." See *Lawrence v. Goldberg*, 573 F.3d at 1271. While the court takes no position on the ultimate merits of the Dykens' counterclaims, it cannot say that those claims are without foundation.

Finally, this court would have granted the relief if requested before the counterclaims were filed. Because the district court case is scheduled for trial in July, this order is retroactive to the date of the filing of the counterclaims. It would be a waste of judicial time and resources to require the counterclaimants to dismiss the claims only to refile them now that they have this court's permission to do so.

To the extent the court has not specifically addressed any of the parties' arguments, it has considered them and determined that they would not alter the result. For the reasons set out above, the court thus grants the Dykens' motion to proceed against the trustee in the district court case.

Dated: June 13, 2023


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE