UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

ANTHONY J. FRISCH, Debtor. _____/	Case No. DG 11-12290 Chapter 7 Hon. Scott W. Dales
MARCIA R. MEOLI, CHAPTER 7 TRUSTEE, Plaintiff, v. KAREN S. THRUN, JANICE WATERWAY, and ANTHONY J. FRISCH, Defendants. _____/	Adversary Pro. No. 13-80072

ORDER REGARDING
POST-JUDGMENT MOTIONS

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

The court entered a judgment in this matter on June 26, 2013, from which the Debtor-Intervenor Anthony J. Frisch (the "Appellant") has timely appealed to the United States District Court. Nearly a month after entry of the judgment, the Appellant filed Records Supplementing Plaintiff's Exhibit 2 to Plaintiff's Response to Defendants' Motion to Dismiss (the "Post-Judgment Records," DN 58).

Almost a week after filing the Post-Judgment Records, the Appellant filed a Motion to Seal or Restrict Access to Part of Record (the "Motion to Seal," DN 64), through which he seeks to seal the Post-Judgment Records, purportedly pursuant to "HIPPA [sic] and Michigan statutes."

See Motion to Seal at ¶ 3. In response to the Appellant's filings, Plaintiff-Appellee Marcia Meoli (the "Appellee") filed Plaintiff-Appellee's Motion to Exclude Doc #58 From the Record on Appeal (the "Motion to Exclude," DN 66), through which she challenges the Appellant's designation under Fed. R. Bankr. P. 8006. The court has reviewed the Motion to Seal and the Motion to Exclude, and has determined to deny both motions on the papers submitted.

At the outset, the court perceives in the recent filings no request to disturb its prior ruling holding that the Appellant's beneficial interest in a certain testamentary trust is included within his bankruptcy estate. The Appellant, in other words, is not seeking reconsideration of the court's opinion under Fed. R. Bankr. P. 9023 or 9024.

Next, with respect to the Motion to Exclude, although some bankruptcy courts conclude that Fed. R. Bankr. P. 8006 authorizes them to strike items from the record on appeal, others disagree. *Compare Amedisys, Inc. v. JP Morgan Chase Manhattan Bank as Trustee (In re National Century Financial Enterprises, Inc.)*, 334 B.R. 907 (Bankr. N.D. Ohio 2005), *with In re Dow Corning Corp.*, 263 B.R. 544 (Bankr. E.D. Mich. 2001). This court concludes that *Dow Corning* is more faithful to the text of Fed. R. Bankr. P. 8005, which makes no provision for excluding designated items, and is more consistent with the trial court's *de minimis* role after entry of the judgment. After a disappointed litigant files a notice of appeal, a trial court only retains jurisdiction to enforce the judgment, *City of Cookeville, Tenn. v. Upper Cumberland Electric Membership Corp.* 484 F.3d 380, 394 (6th Cir. 2007), or proceed with matters that are in aid of the appeal. *Inland Bulk Transfer Co. v. Cummins Engine Co.*, 332 F.3d 1007, 1013 (6th Cir. 2003). As a matter of procedure, with limited exceptions,[1] appeal-related motion practice will take place in the appellate court, in this case the United States District Court. *See* Fed. R.

[1] *See, e.g.*, Fed. R. Bankr. P. 8002(c) (bankruptcy judge may extend time to appeal) and 8005 (stay pending appeal should be addressed first to bankruptcy judge).

Bankr. P. 8011(a) (directing requests for orders to be filed with the "clerk of the district court or the clerk of the bankruptcy appellate panel").

While it is true that this court did not consider the Post-Judgment Records in reaching the decision under review because the Appellant did not file them until nearly a month after the entry of judgment, excluding the information from the appellate record could conceivably interfere with the appellate court's exercise of its jurisdiction by depriving it of information that at least one of the parties regards as important. This outcome may not be in aid of the appeal. The Appellee may certainly seek to exclude the Post-Judgment Records from the appellate court's consideration, but a motion under Fed. R. Bankr. P. 8011 addressed to the United States District Court is a course of action more consistent with the rules, and more respectful of the appellate court's distinct role.

Finally, the court will also deny the Motion to Seal, on the merits.[2] Other than the unspecific reference to "HIPPA"[3] [sic] and unnamed "Michigan Statutes," the Motion to Seal offers no authority for curtailing public access to papers that the Appellant is offering in support of his position. The documents included among the Post-Judgment Records are evidently a subset of the Appellant's medical records which he hopes to keep private. Given the stricture of 11 U.S.C. § 107, however, and without an explanation of the scantily-cited authorities, the court cannot grant the Motion to Seal. The general rule in bankruptcy courts is that "a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(a). Although

[2] Unlike the Motion to Exclude, the Motion to Seal affects only the public interest in court records, and not the District Court's access to the Post-Judgment Records. Consequently, the court believes that resolving the Motion to Seal is within its authority because it is in aid of the appeal and could not conceivably affect the District Court's decision on the merits.

[3] The court assumes the reference is to "HIPAA," known formally as the "Health Insurance Portability and Accountability Act of 1996," Public Law 104-191.

Congress contemplated some exceptions to the general rule, medical records do not qualify as trade secrets, research and development or other commercial information, nor are they scandalous or defamatory. *Id.* § 107(b). As for the statutory allusions within the motion, the court is not convinced that HIPAA prevents a patient from sharing his own medical information, as the thrust of that statute is to limit the authority of third-party medical providers or insurers to disclose private patient information. Moreover, the bald reference to "Michigan Statutes," even if such statues could trump § 107, neither permits nor merits a response from the court.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion to Seal (DN 64) is DENIED.

IT IS FURTHER ORDERED that the Motion to Exclude (DN 66) is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon James W. Alexander, Esq., Laura E. Morris, Esq., Elisabeth M. Von Eitzen, Esq., William R. Farley, Esq., and the United States Trustee.

END OF ORDER

IT IS SO ORDERED.

Dated August 5, 2013

Scott W. Dales
United States Bankruptcy Judge