United States Bankruptcy Court
District of New Mexico

Document Verification

Case Title: **Shari L. Crandell v. Brian M. Lockwood**
Case Number: **99-01007**
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Comments: Findings of Fact, Conclusions of Law, and Memorandum Opinion on Sears' Motion to Dismiss and Order Denying Motion to Dismiss

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
BRIAN M. LOCKWOOD,
Debtor. No. 7-98-16196 SA

SHARI L. CRANDELL,
Plaintiff,
v. Adv. No. 99-1007 S

BRIAN M. LOCKWOOD,
Defendant.

v.

Sears,
Third Party Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND MEMORANDUM OPINION ON SEARS' MOTION TO DISMISS and ORDER DENYING MOTION TO DISMISS

This matter is before the Court on Sear's Motion to Dismiss Third Party Complaint. The Court conducted a preliminary hearing on the motion on April 20, 1999, and instructed the parties to file briefs. Having considered those briefs, and being otherwise sufficiently advised in the premises, the Court finds that the motion is not well taken.

Procedural History of Case

Plaintiff filed her Complaint to Determine Dischargeability of Debt on January 8, 1999. She alleges that plaintiff and defendant were divorced in August, 1992. As part of their Marriage Settlement Agreement defendant was obligated to pay a debt owed to Third Party Defendant Sears which was carried in her name and based upon her credit. She further alleges that by

November, 1993 defendant had reduced the balance to zero, but then failed to close the account and continued to incur new charges. She claims that the current balance is approximately $4,200 and now that defendant has filed bankruptcy Sears is attempting to hold her liable on the debt. If she is liable to Sears, she wants defendant to indemnify her and asks that the Court hold the contingent indemnification liability owed by Defendant nondischargeable under 11 U.S.C. § 523(a)(2),(6), or (15).

Defendant filed his answer and third party complaint ("complaint") for declaratory judgment on January 29, 1999. He claims that he notified Sears in September, 1992, of the divorce, that it knew all payments were made by him, that he reduced the balance to zero after the divorce, and that all subsequent charges were made by him. He claims that there is an actual controversy as to whether Plaintiff is legally indebted to Sears, and that as a result of this controversy Plaintiff is attempting to hold him liable for the debt. He seeks a judgment declaring that the Sears debt was his sole and separate debt and that it has been discharged.

Sears responded to the complaint with a motion to dismiss pursuant to Bankruptcy Rule 7012(b)(6). Sears argues that the complaint fails to allege that it "is or may be liable to" defendant as required by Bankruptcy Rule 7014. Sears also argues that in his original schedules filed in the bankruptcy,

defendant listed plaintiff as a co-debtor on the Sears debt, so therefore defendant cannot now take inconsistent positions with regard to the debt. Accordingly, it seeks dismissal of the complaint.

Discussion

First, Sears' claim that defendant cannot take inconsistent positions must fail. Judicial estoppel, which "bars a party from adopting 'inconsistent positions in the same or related litigation'" is generally not recognized by the Tenth Circuit. Golfland Entertainment Centers v. Peak Investment, Inc., 119 F.3d 852, 858 (10th Cir. 1997)(citations omitted). See also Dewey v. Dewey, 223 B.R. 559, 566 n.9 (10th Cir. BAP 1998).

Sears' other basis for dismissal is that the complaint fails to state a claim under Rule 7014.[1] While it may be true that the complaint fails to allege that Sears "is or may be liable" to Defendant and that might warrant dismissal under Rule 7014, see e.g., Gulf Insurance Group v. Narumanchi, 221 B.R. 311, 315 (Bankr. D. Ct. 1998), the Court should construe pleadings liberally under the Federal Rules of Civil Procedure to do "substantial justice". See Bankruptcy Rule 7008(a) (incorporating FRCP 8(f)). Courts reviewing a motion to dismiss should focus on the substance of the document to determine whether the pleading substantially complies with the required elements of FRCP 8. In re Little, 220 B.R. 13, 17 (Bankr. D.

[1]The Third Party Complaint does not state it is based on Bankruptcy Rule 7014.

N.J. 1998). Those requirements are 1) jurisdiction (if necessary), 2) a short and plain statement of the claim showing the pleader is entitled to relief, and 3) a demand for judgment. FRCP 8(a).

Before turning to the merits of Sears' motion to dismiss for failure to state a claim, the Court first must determine whether it has jurisdiction over the subject matter of this third party action. Plaintiff's original complaint to determine dischargeability is a core proceeding under 28 U.S.C. § 157(b)(2)(I) over which the Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). The matters plead by defendant in his complaint center around the same facts and transactions that are the basis for Plaintiff's complaint. Defendant's complaint seeks declaratory relief that 1) the debt to Sears was discharged, and 2) that it was his sole and separate debt. The first claim for relief is a core proceeding over which the Court has jurisdiction. The second claim is one based on state law, but related to his bankruptcy. To the extent that the debt under state law is his sole and separate debt he could not be liable to Plaintiff on her claim. If, on the other hand, the debt is a joint and several debt with Plaintiff, he may face a judgment of nondischargeability of that debt. Viewing the present posture of the case overall, the outcome of Defendant's complaint impacts on his fresh start and is therefore a matter "arising under Title 11" over which the Court has jurisdiction. Edwards v. Sieger,

200 B.R. 636, 638 (Bankr. N.D. In. 1996). Furthermore, the complaint essentially seeks to liquidate the amount of plaintiff's claim, which is a matter the Court would necessarily consider in any event. Id.

In isolation, the state law claims do not arise under Title 11, but the Court is convinced that it has jurisdiction to hear and determine them in any event. First, the Court finds that the claims are "related to" the bankruptcy because the result of the action will determine the amount of the possibly nondischargeable debt.[2] This is sufficient to give the court jurisdiction under 28 U.S.C. § 1334(b). Second, the action can fall under the umbrella of supplemental jurisdiction under the two-part test set forth in United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966): 1) the existence of a cognizable federal claim, and 2) a relationship between that claim and the state claim that permits the conclusion that the entire action comprises one "case" and that the state and federal claims derive from a common nucleus of operative fact. See also generally Hawkins v. Eads, 135 B.R. 387, 391-95 (Bankr. E.D. Ca. 1991). In sum, the Court finds that it has jurisdiction over the third party claim.

Turning back to the merits of Sears' motion to dismiss, the Court finds that Defendant has stated a claim for relief: a

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[2]"An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." Paccor v. Higgins, 743 F,2d 984, 994 (3rd Cir. 1984).

declaration of who is liable on a debt. Furthermore, there is no question that Defendant could have filed this claim as an original adversary proceeding in this Court. The Court finds no reason that it cannot be brought in the current context. Also, the Court finds that Defendant could have filed this action as a counterclaim and added Sears as an additional party to the counterclaim under Bankruptcy Rule 7013 (incorporating FRCP 13(h)). See Ross v. General Plastic and Chemical Corp., 55 B.R. 407, 409 (Bankr. D.C. 1985).

In sum, construing the pleadings liberally in favor of Defendant the Court finds that the Defendant has stated a claim for relief and that Sears' motion to dismiss should be denied.

Finally, Courts have the discretion to realign parties as necessary, according to their actual interests in litigation. See Imel v. United States, 169 B.R. 37, 38 (Bankr. W.D. Tx. 1994) (Debtor sought declaratory relief on dischargeability of debt; Court realigned United States as plaintiff because it had burden of proof.) In this case, the parties have not had the opportunity to address the issue of realignment, so that the Court will reserve any decision on realignment until the parties respond (if they wish) on this issue.

IT IS ORDERED that the Motion to Dismiss is denied.

IT IS FURTHER ORDERED that the parties shall have two weeks from the date of entry of this Order to submit memoranda, if they desire, on the issue of realignment of the parties.

IT IS ORDERED that if any party submits a memorandum, the other parties shall have ten days to file a response.

Hon. James S. Starzynski
United States Bankruptcy Judge

I hereby certify that, on the date file stamped above, a true and correct copy of the foregoing was either electronically transmitted, faxed, mailed, or delivered to the following: Daniel Behles, John Caffrey, and Paul Kienzle.