

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

CASSIDY LAND & CATTLE)
CO., INC.,)
Appellant,)
v.)
FIRSTIER BANK, N.A., OMAHA,)
Appellant.)

CV. 88-0-68
BK. 82-1257

A87-244

ORDER

FILED
DISTRICT OF NEBRASKA
JUL 19 1988
William L. Olson, Clerk
By _____ Deputy

This matter is before the Court on appellant's notice of appeal (Filing No. 1) and appellant's motion for a stay pending appeal (Filing No. 4). Appellant appeals the Bankruptcy court's order of January 11, 1988, overruling debtor's motion for a jury trial.

The Bankruptcy Court ruled that "[u]nder 28 U.S.C. § 1411, there is no authority for a jury trial. The case is a core proceeding and no jury trial is available in core proceeding." In its motion for a stay, appellant concedes that it does not question the correctness of the Bankruptcy Court's interpretation and application of 28 U.S.C. § 1411. The issue presented on appeal is "[d]id Congress impermissibly give an unconstitutional grant of jurisdictional power to an inferior Article I Court to take away a litigant's right to a jury trial under 28 U.S.C. § 1411?"

The Court notes that "[n]othing in the Bankruptcy Code expands or diminishes a litigant's right to a jury trial under the seventh amendment to the United States Constitution, any

guarantee under applicable State Constitution, or under any applicable statute." In Re Energy Resources Co., Inc., 49 Bankr. 278, 281 and n.2 (Bankr. D. Mass. 1985). "A bankruptcy court is an appropriate tribunal for determining whether there is a right to a trial by jury of issues for which a jury trial is demanded." American Universal Ins. Co. v. Pugh, 821 F.2d 1352, 1355 (9th Cir. 1987).

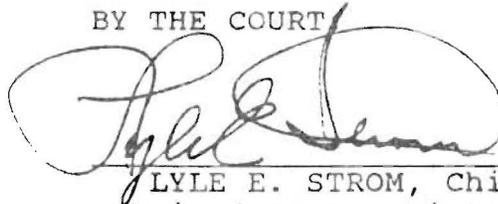
Moreover, 28 U.S.C. § 1411(a) provides only that "this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death claim." 28 U.S.C. § 1411(a). The action on which debtor seeks a jury trial is a declaratory judgment action involving the issue of whether or not certain promissory notes are forgeries. Section 1411(a) is inapplicable since personal injury or wrongful death are not at issue. The Court accordingly finds appellant's argument lacks merit.

Appellant's motion for a stay will be rendered moot by this decision. Accordingly,

IT IS ORDERED that appellant's appeal is dismissed; appellant's motion for a stay is denied as moot.

DATED this 19th day of July, 1988.

BY THE COURT



LYLE E. STROM, Chief Judge
United States District Court