

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
LE VERN and NORMA CHERRY,) CASE NO. BK85-80132
)
DEBTOR.) CH. 7

MEMORANDUM

Hearing was held on December 1, 1998, on a Motion to Reopen filed by the Debtors. Appearances: James Nisley for the Debtors and George Remer for himself. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(a)(2)(H) and (I).

Background and Facts

Debtors Le Vern and Norma Cherry filed a Chapter 11 petition which was subsequently converted to Chapter 7 in September, 1987. Cherrys received a discharge in July, 1988. Plaintiff George Remer filed suit in the District Court of Plymouth County, Iowa, to obtain a judgment against Debtors for fees due for professional services rendered prior to the Debtors' discharge. Cherrys consented to the jurisdiction of the Iowa court and a trial was held. According to the judgment entered in the state court, Cherrys did not raise their bankruptcy discharge as a defense. Judgment was entered on April 6, 1992, in favor of Remer in the amount of \$8,388.69 together with interest thereon as of September 1, 1989. At no point did Cherrys ever appeal this state court decision.

In April, 1998, Remer filed a certified copy of the Iowa judgment in the District Court of Lincoln County, Nebraska, and then proceeded to execute on real estate owned by Cherrys. Cherrys filed a Motion to Quash Judgment and Execution in which they alleged that Remer had violated the injunctive provisions of 11 U.S.C. § 524 by causing execution to be issued against Cherrys, and that Remer had not obtained approval from the bankruptcy court for the allowance of the professional fees which were the subject of the Iowa State Court judgment.

On October 9, 1998, Cherrys filed a Motion to Reopen their bankruptcy case, reiterating the allegations from their Motion to Quash regarding violations of the injunctive

provisions of 11 U.S.C. § 524 and failure to obtain approval from the bankruptcy court for the professional fees. Remer filed a "Motion to Remand" the case back to the District Court of Lincoln County, Nebraska, maintaining that Cherrys' Motion to Reopen amounted to an attempt to circumvent the removal requirements for federal court.

Decision

Cherrys' Motion to Reopen is denied for the reasons discussed below and Remer's motion is made moot as a result.

Discussion

According to the Rooker-Feldman doctrine, impermissible appellate review occurs in the lower federal courts whenever they entertain claims which are inextricably intertwined with those addressed in the state court, particularly if the relief requested in the federal action would effectively reverse the state court decision or void its ruling. Snider v. City of Excelsior Springs, Mo., 154 F.3d 809 (8th Cir. 1998); Ferren v. Searcy Winnelson Co. (In re Ferren), No. 98-6076EA, slip op. at 7. (B.A.P. 8th Cir. December 2, 1998).

As a result, to determine whether the Rooker-Feldman doctrine bars the Cherrys' attempt to reopen their bankruptcy case requires determining exactly what the state court held and whether the relief requested by Cherrys in their federal action would require a determination that the state court's decision is wrong or would void its ruling. If the relief requested in the federal action requires determining that the state court decision is wrong or would void the state court's ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit. Snider, 154 F.3d at 811.

The District Court of Plymouth County, Iowa, entered a final, appealable judgment in favor of Remer regarding professional fees owed Remer by Cherrys. While the doctrine of res judicata requires that the court considering whether to hear a claim determine whether the party against whom a res judicata defense is raised had a full and fair opportunity to pursue its claim in the previous state proceeding, the Rooker-Feldman doctrine does not. Garry v. Geils, 82 F.3d 1362, 1366 n.8. There is no procedural due process exception to the Rooker-Feldman doctrine. Postma v. First Fed. Sav. & Loan, 74

F.3d 160, 162 n.3 (8th Cir. 1996). To what extent Cherrys might have altered their defense strategy in the state court action, or whether or not they should have appealed the state court decision is irrelevant in the instant matter. They did not. Pursuant to the Rooker-Feldman doctrine, this Court has no jurisdiction to hear what in effect amounts to an appeal of a state court decision.

The Motion to Reopen this bankruptcy case is denied.

Separate journal entry to be filed.

DATED: December 15, 1998

BY THE COURT:

/s/ Timothy J. Mahoney

Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

93 NISLEY, JAMES

Copies mailed by the Court to:

George Remer, 4926 230th St., Battle Creek, IA 51006
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
Le Vern and Norma Cherry,)	CASE NO. BK85-80132
)	A
<u>DEBTOR(S)</u>)	
)	CH. 7
)	Filing No.
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	
)	DATE: December 15, 1998
<u>Defendant(s)</u>)	HEARING DATE: December
)	1, 1998

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion to Reopen filed by the Debtors.

APPEARANCES

James Nisley, Attorney for the Debtors
George Remer, pro se

IT IS ORDERED:

The Motion to Reopen this bankruptcy case is denied.

BY THE COURT:

/s/ Timothy J. Mahoney

Timothy J. Mahoney
Chief Judge

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