

In the United States Bankruptcy Court

for the Northern District of Iowa

DAVID F. TIBBITTS and
KATHLYN R. TIBBITTS
Debtor(s).

Bankruptcy No. 86-02398W

Chapter 7

MEMORANDUM OF DECISION RE: APPLICATION TO VACATE ORDER REOPENING ESTATE

The matter before the court is the debtors' application to the court to vacate a prior order reopening this bankruptcy case. The application was resisted by David Markle, an unsecured creditor, and the contested matter came before the court for hearing on May 10, 1988 in Waterloo, Iowa.

The court now states the following findings of fact and conclusions and issues the following order pursuant to Bankr. R. 7052.

FINDINGS OF FACT

This Chapter 7 bankruptcy case was commenced by the voluntary filing of a petition by David F. Tibbitts and Kathlyn R. Tibbitts (TIBBITTS) on October 23, 1986. Michael C. Dunbar was appointed interim trustee and later permanent trustee. A meeting of creditors was held on December 1, 1986.

In the schedule of assets filed by Tibbitts, there was listed on section B-2-q a "[c]ontingent claim against Citizens National Bank -- See Statement of Financial Affairs answer to Question (10a)." This asset was listed as having zero value. The Statement of Affairs (Question 10(a)) described the claim against the bank with more particularity as follows:

David & Kathlyn Tibbitts vs. Citizens National Bank, James P. Allen, J.J. Cecil & Maxine Cecil, Floyd County, Law No. 24035, suit for tortuous interference with business relationship and breach of fiduciary duty.

David Markle was not originally listed as a creditor of the debtors but was added to schedule A-3 as an unsecured creditor by an amendment filed by Tibbitts on February 4, 1987.

On December 3, 1986, the trustee filed his notice of abandonment of certain particular assets and also filed his "Report of No Distribution." This report is also commonly called a "no asset" report.

As a result of the filing of the no asset report, Final Decree entered in this case on March 10, 1987 discharging the trustee and closing the case.

Tibbitts had received an offer of \$1,100.00 from one of the parties to the pending lawsuit in the fall of 1984. This verbal offer of settlement was followed sometime in 1985 by a written offer in the same amount.

In January, 1988, defendant Citizens National Bank offered Tibbitts \$1,000.00 to settle the case or a portion of it.

David Markle thereafter applied to the court to reopen this case in order that the trustee might pursue Tibbitts' claim on behalf of the bankruptcy estate.

On February 22, 1988, this court entered its order reopening the case and reappointing Michael C. Dunbar as trustee.

Tibbitts filed their application with the court on March 15, 1988 asking this court to vacate the prior order reopening the estate. David Markle resisted the application to vacate, and it is the application to vacate and the resistance thereto that came before the court on May 10, 1988.

Tibbitts did not conceal the existence of the claim against the bank and others when they filed their schedules.

DISCUSSION

Once a bankruptcy estate has been fully administered, it is required by the Code that the case be closed. 11 U.S.C. § 350(a).

The Code also provides, however, that a case may be reopened by the court in order to administer assets. 11 U.S.C. § 350(b). Bankr. R. 5010.

There is no question that this court, the Hon. Michael Melloy presiding, had the authority to reopen this estate. The undersigned judge declines to vacate that order.

There is implicit in the argument of the parties, however, a presumption that a reopening of the estate somehow undoes the abandonment of scheduled assets which was effected when the case was previously closed.

The commencement of a bankruptcy case creates an estate which includes all legal or equitable interests of a debtor as of the commencement of the case. 11 U.S.C. § 541(a)(1).

Causes of action arising out of contract are property of the estate. Management Investors v. United Mine Workers of America, 610 F.2d 384 (6th Cir. 1979).

It is the duty of a debtor to schedule his assets. 11 U.S.C. § 521(l). The debtors complied with this requirement.

Abandonment of property of the estate may be accomplished by an affirmative act of abandonment by the trustee under 11 U.S.C. § 554(a) or (b) or it may be accomplished as a matter of law by the closing of the case coupled with the failure of the trustee to administer scheduled assets. 11 U.S.C. § 554(c).

The trustee's no asset report and the closing of this case had the effect of abandoning debtors' claims against the bank and others then pending in state court. Wallace v. Enrriquez (In re Enrriquez), 22 B.R. 934 (Bankr. D. Neb. 1982).

That abandonment of the claims by the trustee is not undone by the reopening of the case.

Therefore, although the case has been reopened, it does not follow that the claims, which are the subject matter of this dispute between the parties, are assets which may presently be administered by the reappointed trustee.

CONCLUSIONS OF LAW

1. This case was appropriately reopened pursuant to the court's authority under 11 U.S.C. § 350(b).
2. The claims of Tibbitts pending in the Iowa District Court against Citizens National Bank, et al., Law No. 24035 are not presently assets of this bankruptcy estate.

ORDER

IT IS THEREFORE ORDERED that the Motion to Vacate the Court's Order Reopening the Estate is denied.

SO ORDERED ON THIS 26th DAY OF MAY, 1988.

William L. Edmonds
Chief Bankruptcy Judge