

In the United States Bankruptcy Court

for the Northern District of Iowa

SAMUEL HENRY THIELKE and
HELEN KAY THIELKE

Bankruptcy No. 87-00814SSC

Debtor(s).

Chapter 7

ROBERT THIELKE

Adversary No. X87-0102C

Plaintiff(s)

vs.

ACKLEY STATE BANK and
CLAUDE PITRAT Trustee

Defendant(s)

ORDER RE: NEED TO ESTABLISH JURISDICTION AND DETERMINE APPROPRIATE VENUE

The matter before the Court sua sponte¹ is whether the Court has appropriate jurisdiction to hear the above-captioned adversary proceeding. The question arises subsequent to trial on Plaintiff Robert Thielke's complaint against Ackley State Bank (Bank) and Claude Pitrat, Trustee of the bankruptcy estate of Samuel Henry Thielke (Debtor) and Helen Kay Thielke, to determine whether the bankruptcy estate has an interest in certain assets held by the bank.

¹ A bankruptcy court has the power to determine whether it has jurisdiction to proceed in any action. In re Ennis, 50 B.R. 119, 120 (Bankr. D. Nev. 1985)(citing United States v. United Mine Workers, 330 U.S. 258, 289-92 (1947)).

In his answer, Trustee admitted that Debtor and his wife commenced a Chapter 7 bankruptcy proceeding in the Bankruptcy Court of the United States for the District of Arizona, Case No. 87-00814-PHX-SSC, and that Plaintiff's action was brought pursuant to Bankr. R. 7001 to determine Debtors-Defendants' interest in certain property. Further, Trustee admitted that the assets in question are certain bank accounts held by Ackley State Bank in Hardin County, Iowa but denied for lack of information that the Plaintiff is the sole depositor or purchaser of these assets.

Trustee asserted that he holds an interest in these assets pursuant to provisions of the Bankruptcy Code and that the Code further prohibits Plaintiff, Debtors-Defendants, or Ackley State Bank from disposing of these assets. Trustee "consented to an expeditious hearing on this matter" and admitted that "no other proceedings had been initiated in this or any other court to determine the parties' interest in said property."

Trustee initially objected to the venue of this Court and asserted that the proper venue was the United States Bankruptcy Court for the District of Arizona as specified by 28 U.S.C. § 1409(a). Trustee, therefore, sought dismissal of the complaint or, in the alternative, a declaration that the assets are part of the Debtor's bankruptcy estate.

Bank answered Plaintiff's complaint and admitted that Robert Thielke is the owner of certain assets held by Bank but denied that he is the sole owner. Bank admitted that the accounts show Plaintiff and Debtor as joint owners of the account with rights of survivorship but stated it had no knowledge of Plaintiff's intentions in placing Debtor's name on these accounts. Further, Bank admitted that it had been directed by Trustee to "freeze all accounts of whatever nature located at Ackley State Bank in which the Debtor Samuel Henry Thielke is listed as a joint tenant until further Order of Court" and that it had not yet been advised by Trustee that release of these assets to Plaintiff was authorized.

Bank counterclaimed against Plaintiff and cross claimed against the Trustee stating that Bank has a statutory right of setoff against all assets of Debtor located at the Bank due to several overdue loans made to Debtor.

Trustee answered the crossclaim and again asserted that proper venue was with the Bankruptcy Court in Arizona. Further, Trustee answered that Bank cannot setoff accounts against indebtedness during the pendency of the automatic stay of 11 U.S.C. § 362.

Plaintiff responded to Trustee's answer to the complaint and Trustee's first affirmative defense and stated that venue is properly with this Court pursuant to 11 U.S.C. § 1409(a) and to appropriate legislative history which sets forth that "any bankruptcy court in any location shall be empowered to hear and determine matters located within their jurisdiction in the interest of justice and forum conveniens." Plaintiff asked this Court to retain jurisdiction.

Plaintiff also replied to Bank's counterclaim and stated that Plaintiff had reserved ownership of the account and that Debtor is only an unvested remainderman.

The parties' Pre-trial Statement was filed on September 15, 1987. One of the several remaining questions of law set forth was whether this Court was the proper venue for this adversary proceeding. Pre-trial was held on December 4, 1987.

Trial was held April 11, 1988. The Court initially sought a determination of whether venue was appropriate. All parties waived any objection to venue. No party raised the issue of jurisdiction. Trial proceeded and the matter was taken under advisement. Briefs were received from all the parties by May 31, 1988.

Pursuant to 28 U.S.C. § 1334(d),

[t]he district court in which a case under Title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of the estate.

28 U.S.C. § 1334(d)(emphasis added). Many courts have recognized that it is in the best interest of the bankruptcy estate that all matters begin in the "home court." Allegheny, Inc. v. Hipak Industries, Inc. (In re Allegheny, Inc.), 74 B.R. 397, 399 (Bankr. W.D. Pa. 1987); Consolidated Lewis Investment Corp. v. First National Bank, 74 B.R. 648, 651 (E.D. La. 1987)(the "interest of justice" is best served by allowing the home court the opportunity to review all lawsuits with a nexus to the bankruptcy); Deak & Co. v. Ir. R.M.P. Soedjono (In re Deak & Co.), 63 B.R. 422, 426-27 (Bankr. S.D. N.Y. 1986); Hamilton v. Dahlquist (In re Dahlquist), 53 B.R. 428, 429 (Bankr. D. S.D. 1985) (matters involving property of the estate are to be dealt with by the court in a district in which the case is pending).² As the court in Dahlquist noted, "[a]ny other rule would unnecessarily complicate the case and make orderly administration of the estate difficult." Dahlquist, 53 B.R. at 429. Confusion

and unnecessary litigation may result if exclusive jurisdiction over core matters in the court in which the main case is pending is not retained. *Id.* It is more conducive to an orderly administration of the estate to allow the court in which the main case is pending to determine whether another court should hear the matter. *Id.*; see also 28 U.S.C. § 1409 (venue determinations relating to adversary proceedings discussed therein). Further, it is more appropriate for the home court to address the question of whether property of the estate is involved, *Deak*, 63 B.R. at 427, and whether modification of the stay is necessary prior to resolution of the issue. *Allegheny*, 74 B.R. at 400-01.

While this Court has heard the evidence and considers it in the interest of judicial economy now to rule, it cannot overlook another court's exclusive jurisdiction over the property in question. Retrial of the case would be unfortunate for the litigants. Alternatives may include a decision by the bankruptcy court in Arizona on the existing record or a transfer of venue to this Court by the Arizona court in order that this Court may issue a decision.

2 At least one court has also relied on Bankr. R. 5005(a) which states "all papers ... shall be filed with the clerk of court in which the case under the code is pending." In re *Fields*, 55 B.R. 294, 295 (Bankr. D. D.C. 1985)(emphasis therein).

Accordingly, this Court will hold its decision in the above-captioned adversary in abeyance until the question of jurisdiction is determined. A status/scheduling conference will be set for the earliest possible date so that the parties will have an opportunity to respond to the Court's order and decide whether to bring these issues before the "home" court in Arizona or to set a schedule for briefs and arguments on these issues before this Court.

ORDER

IT IS HEREBY ORDERED that the Court's decision in the above-captioned adversary shall be held in abeyance pending resolution of whether this Court has jurisdiction;

IT IS FURTHER ORDERED that the Clerk of Court shall immediately schedule a telephonic status/scheduling conference with counsel for all parties at the earliest available date.

SO ORDERED THIS 27th DAY OF JULY, 1988.

William L. Edmonds
Chief Bankruptcy Judge