In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

GARY LYNN SCHMITH and SANDRA JEAN SCHMITH	Bankruptcy No. X90-01247S
Debtor(s).	Chapter 7
DEBRA A. COX	Adversary No. X90--0219S
Plaintiff(s)	
vs.	
GARY LYNN SCHMITH and SANDRA JEAN SCHMITH	
Defendant(s)	

ORDER RE: COX MOTION FOR RELIEF FROM STAY

Debra A. Cox (COX), plaintiff in this adversary proceeding, has moved for modification of the automatic stay to permit her to try her state law claims against the debtors in the Woodbury County District Court. Hearing on the request for relief was held August 6, 1991. The court now issues this order which includes findings of fact and conclusions of law as required by Fed. R.Bankr. P. 7052. This is a core proceeding under 28 U.S.C. § § 157(b) (2) (G) and (O).

FINDINGS OF FACT

Gary Lynn Schmith and Sandra Jean Schmith (SCHMITHS or DEBTORS) filed their joint voluntary petition under chapter 7 on July 13, 1990. On October 22, 1990, Cox filed an adversary complaint seeking a determination that her claims against Schmiths be excepted from discharge under 11 U.S.C. § 523(a) (6). Cox combined her adversary complaint with request for relief from the automatic stay in order to permit her to litigate the underlying state law claims in the Woodbury County District Court where her action against the Schmiths was pending at the time of the filing of bankruptcy. In her prayer, she asked also that any judgment in her favor entered in state court be determined to be nondischargeable by the bankruptcy court. Because plaintiff had combined her request for relief from stay with a claim under § 523(a) (6), the court entered an order concluding that she had waived any requirement that the issue of relief from the stay be determined within the time limits prescribed under 11 U.S.C. § 362(e). See Order, October 29, 1990.

Pursuant to Fed. R.Bankr. P. 7016, this court held a scheduling conference on December 20, 1990. As part of its subsequent scheduling order, the court ruled, pursuant to agreement of the parties, that the "[a]utomatic stay is modified to permit Cox to pursue discovery against debtors in Woodbury County

No. 100050C." Pursuant to the court's scheduling order, the parties' joint pre-trial statement was to be filed by no later than May 27, 1991. Prior to that deadline, plaintiff filed a motion for extension which in part alleged that the parties were working on a "Stipulation" in order to "avoid retrial of this matter in the bankruptcy proceeding." Motion to Extend, April 30, 1991. At the electronically recorded hearing on the motion to extend, attorney Deck for Cox and attorney Cosgrove for the Schmiths each incorrectly advised the court that the automatic stay had previously been lifted to permit trial in the district court. Counsel also advised the court that they would be filing a stipulation agreeing to try the matter at the state court level and be bound by that decision in the bankruptcy proceeding. In light of the stipulation which the parties would be filing, attorney Deck asked that the adversary proceeding be continued until trial had taken place in the state court. The court, incorrectly believing that the automatic stay had been lifted to permit trial in the state court, granted the motion to extend the time for filing the pre-trial statement until a date after the expected trial date in state court.

In the state court action, Cox was suing two parties in addition to the debtors. The state action was to be tried on May 21, 1991. On that morning, debtors and their bankruptcy counsel, attorney Cosgrove, filed a "Withdrawal of Offer to Stipulate." The stipulation, although executed by the parties and their counsel, had never been filed with this court. It stated:

> COMES NOW the parties, Gary Lynn Schmith and Sandra Jean Schmith as debtors and Debra A. Cox, Plaintiff enter into the following Stipulation.
>
> 1. That Debra A. Cox is the Plaintiff and Sandra Jean Schmith and Gary Lynn Schmith are the Defendants in a Woodbury County Law Action number 100050C.
>
> 2. That the issues to be decided in the State Court action above mentioned are identical to the issues to be decided by the Court in the above captioned matter.
>
> 3. That the burden of proof to be decided in the above mentioned State Court number and the above mentioned bankruptcy number are identical.
>
> 4. That the parties agree to try all issues of law in (sic) fact contained in any trial which would be held in the above captioned matter in the State Court action.
>
> 5. That the parties agree to be bound on any findings of fact or conclusions of law entered in the State Court action in regards to the above captioned matter.
>
> 6. That the above captioned matter should be continued until such time as the State Court matter has been resolved.
>
> 7. That the parties further agree that in the event the State Court matter is settled that the parties agree to be bound in the above captioned matter by any settlement or agreement reached in the State matter.

The stipulation (exhibit 5) was executed by attorney Cosgrove and the Schmiths and then forwarded to attorney Deck for execution by him and Cox. In a cover letter dated April 16, 1991 which referenced the enclosure of the stipulation, Cosgrove asked that the executed stipulation be returned to him for filing with the Court. Cosgrove stated that he would file it and also ask the court to "approve it through a proposed Order." (Exhibit 4.) There is no evidence that Deck returned the stipulation to Cosgrove. Subsequent to receiving the signed Stipulation, attorney Deck was not advised by

defendants or their counsel that they were withdrawing it or rescinding it until he appeared in state court on the morning of the trial, May 21, 1991.

Cosgrove did not represent the Schmiths in the state court proceeding. They were instead represented by attorney Teresa A. O'Brien. On May 15, 1990, attorney Deck served "Requests for Admission" on O'Brien and other defendants' counsel. Under Iowa R.Civ. P. 127, the defendants are supposed to respond to requests for admission within 30 days after service. Absent a response, the matters requested are deemed admitted. Iowa R.Civ. P. 127. The requests served on O'Brien were apparently misfiled and no responses were served. Sandra Schmith did not learn of the failure to respond to the requests until May 20, 1991, the day prior to the scheduled state court trial. Even then she believed that the problem involved interrogatories, not requests for admission. The failure to respond to the requests was apparently first discovered by Schmiths' state court counsel on the eve of trial, and on the following morning (May 21), the debtors, with the aid of attorney Cosgrove, filed a withdrawal of the unfiled stipulation in bankruptcy court.

DISCUSSION

I.

Following the filing of the withdrawal by Schmiths, Cox filed a request for hearing on her original request for relief from stay. She asked that at the hearing, the defendants' withdrawal position be clarified and that the court determine the relief to be granted. Paragraph 4 of the request conceded that there had been no previous order granting relief from the stay. Cox contends that the stipulation regarding the stay cannot be withdrawn by the debtors absent a showing that failure to permit withdrawal would result in "manifest injustice" to the debtors. Moreover, Cox claims she will be prejudiced if the stipulation is withdrawn because she will then be required to try her case against Schmiths twice, once in state court and once in bankruptcy court. But Cox contends that even if she is not permitted to try her case first in state court, the failure to respond to the requests for admission will result in the matters requested being deemed admitted in fhis adversary proceeding.

Schmiths respond that the stipulation as to the stay was ineffective absent a court order approving it and that the court could not have approved it because the stipulation would have resulted in this court's abrogation of its jurisdiction to determine disputes under 11 U.S.C. § 523.

II.

It is a major misperception in this case that the court is dealing with relief from the stay under 11 U.S.C. § 362. Heretofore, neither the parties nor the court has noticed that an order discharging debtors of their pre-petition debts had entered October 31, 1990. This order constitutes an injunction inter alia prohibiting creditors from continuing state court litigation against debtors to determine their liability or to collect a pre-petition debt. 11 U.S.C. § 524(a)(2). The discharge granted under 11 U.S.C. § 727 does not prevent Cox from pursuing timely filed bankruptcy litigation seeking a determination of whether her claim against Schmiths should be allowed and whether it is excepted from discharge under 11 U.S.C. § 523(a) (6). 11 U.S.C. § 727(d), Discharge Order, October 31, 1990, para. 3. However, until Cox's claim against Schmiths would be determined to be excepted from discharge, the injunction prohibits her from further proceedings in state court.

A determination of whether Cox's claim against Schmiths is excepted from discharge under 11 U.S.C. § 523(a)(6) is within the exclusive jurisdiction of the bankruptcy court. 11 U.S.C. § 523(c) (1). This court construes the provisions of 11 U.S.C. § § 523, 524 and 727 to provide that generally a complaint

under 11 U.S.C. § 523(a) (6), must be determined by the bankruptcy court before further state court proceedings are permitted.

In the pending case, the parties had executed a written stipulation permitting them to try the underlying claim in state court prior to the bankruptcy court determining whether the underlying claim, if proved, were dischargeable. Schmiths' counsel argues for a construction of the agreement that ousts the bankruptcy court of its jurisdiction to determine the dischargeability issue. He further contends that an agreement so construed is unenforceable. I do not construe the agreement in such a fashion. Counsel have explained that the state court suit is one for tortious interference by Schmiths of a land sale contract between Cox and third parties. If permitted, the state court would determine the facts and the law with regard to that claim. Whether the facts as found and the law as concluded by the state court inevitably lead to a determination that Cox's claim is nondischargeable, is a determination within the sole jurisdiction of the bankruptcy court. Grogen v. Garner, U.S., 111 S.Ct. 654, 657-658 (1991). Thus, if the state court determined that Cox had proven the elements of a claim for tortious interference against the Schmiths, the bankruptcy court must still determine whether the elements of the state claim are sufficient to establish a nondischargeability claim for willful and malicious injury under 11 U.S.C. § 523(a)(6).

The court construes the stipulation of the parties as nothing more than an agreement that the bankruptcy court stay this adversary proceeding until the state court had determined Schmiths' liability to Cox under state law. The court believes that stipulations as to such matters are permissible and more often than not they are approved. But the court concludes that the approval of such stipulations is within the court's discretion. The bankruptcy court must be able to control the progress of litigation on issues emplaced solely within its jurisdiction. This includes issues raised under 11 U.S.C. § 523(a)(6). The parties may reach stipulations which have the effect of altering the progress of litigation, but they may not so alter this court's management of its litigation without its approval.

Approval of the stipulation was certainly contemplated by Schmiths' counsel. However, it was never sought by either party. Cox now seeks this court's order binding Schmiths to the stipulation despite the parties' prior failure to obtain court approval and despite Schmiths' desire to withdraw it.

III.

Having considered the evidence, this court concludes that Schmiths should be allowed to withdraw from the stipulation.[(1)] As stated, a determination of dischargeability under 11 U.S.C. § 523(a) (6) is entrusted to the bankruptcy court. If the claim is determined to be nondischargeable, Cox would then be able to pursue Schmiths to liquidate and collect the claim in state court proceedings. However, pursuant to 11 U.S.C. § 524 and the injunction order of this court, Cox has no absolute right to proceed first in state court. Thus without the stipulation, Cox would be required to litigate dischargeability of her claim in bankruptcy court. In the bankruptcy court, Schmiths would not be disadvantaged by their failure to respond to the requests for admission. In this court, Schmiths' failure to respond to the requests for admission would not result in the requested matter being deemed admitted for the purposes of the adversary proceeding.

Cox points out that Iowa R.Civ. P. 127 and 128, dealing with requests for admission and their effect, and Fed.R.Civ. P. 36 are similar, and thus Schmiths' withdrawal from the stipulation would not in the long run benefit them because the same matters would be deemed admitted at any trial before the bankruptcy court. I do not agree. First, the Rules are similar but not identical. Iowa R.Civ. P. 127 provides for the service of a written request for admission of the truth of any matters "for the purposes of the pending action only .... " A matter is deemed admitted unless within 30 days after service of the

request, the party upon whom the request is served serves a written answer or objection. Iowa R.civ. P. 128 provides that any matter admitted under R.Civ. P. 127 is "conclusively established in the pending action unless the court on motion permits withdrawal or amendment of the admission." Rule 128 also states that "[a]ny admission made by a party under R.C.P. 127 may be used as an evidentiary admission only in any other proceeding." Fed. R.Civ. P. 36(a) also provides for the service of requests for admission "for the purposes of the pending action only." The Rule also provides for matters being deemed admitted where a proper response is not made. Fed. R.Civ. P. 36(b) is the counterpart to Iowa R.Civ. P. 128. However, the Rules are not identical in an important respect. Rule 36(b) provides that any matter admitted under the Rule is "conclusively established unless the court on motion permits withdrawal or amendment of the admission." However, the Rule's subsection also states that "[a]ny admission made by a party under this Rule is for this purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding." The important distinction between the two Rules is that matters deemed admitted under the Iowa Rules may be used as evidence in other state court proceedings. Under the Federal Rules, admissions under Rule 36 may not be used against a party in any other proceeding.

The dischargeability matter pending before this court presents a federal question. Federal Rules of Civil Procedure control. Fed. R.Civ. P. 1. The state rule of procedure cited to the court cannot control discovery and evidentiary introduction of facts in a case involving a federal question.

I thus conclude that although Schmiths may be conclusively bound by the matters deemed admitted in state court, the state rule does not require a federal court to accept the matters deemed admitted either as factually conclusive or as evidence. This was the legal status of the requests for admission at the time the Schmiths entered into the stipulation. By agreeing to try the underlying state claims first in state court, they were putting themselves at a disadvantage. The court believes that the Schmiths did not knowingly do this. They entered a pitfall, and as stated by the Supreme Court, a "stipulation . . . ought not to be used as a pitfall .... " Carnegie Steele Co. v.Cambria Iron Co., 185 U.S. 403, 444 (1901). It is important to this court's decision that the lack of response to the requests for admission was already a problem in the state court proceeding prior to the stipulation. Were debtors to have become delinquent in discovery matters after the execution of the stipulation, I might have come to a different conclusion on the plaintiff's motion.

Were the state court matter tried first, its decision would have collateral estoppel effects. See Grogen v. Garner, __ U.S.___, 111 S.Ct. 654, 657-658 (1991). I would prefer not to make a determination on dischargeability faced with a state court judgment which could be premised in part on matters deemed admitted. See Discussion in Matter of Cassidy, 892 F.2d 637, 639-640 (7th Cir. 1990).

IV.

If this court determines Cox's claim to be nondischargeable, Schmiths still face litigation of and liquidation of Cox's claim in state court, a court in which they may still be bound by matters deemed admitted. This is up to the state court judge. I would point out, however, that in the scheduling order in this adversary proceeding, the court modified the stay to permit the parties to engage in discovery. The court construes its own order to be broad enough to permit the parties to argue to the state court whether it should permit the withdrawal of the matters deemed admitted.

CONCLUSION

Parties to a bankruptcy court adversary proceeding are not free to stay those proceedings without the permission of the court. No court approval having been given, Cox was and is prevented by the discharge order in this case from proceeding to trial of her state law claims against Schmiths. Cox should not be permitted to obtain a modification of the injunction of discharge in order to try her claims against Schmiths in state court based on Schmiths' execution of the stipulation. Schmiths should be permitted to withdraw from the stipulation.

ORDER

Schmiths are permitted to withdraw from the stipulation in which they agreed to trial of all matters in Woodbury County District Court. Cox's motion for relief from stay is denied.

Judgment shall enter accordingly.

SO ORDERED ON THIS 12th DAY OF SEPTEMBER, 1991.

William L. Edmonds
Bankruptcy Judge

1. The court, having made its determination to permit withdrawal, need not decide whether unfiled stipulations are enforceable.