In the United States Bankruptcy Court

for the Northern District of Iowa

RODNEY WRIGHT — Bankruptcy No. L91-01588C
Chapter 7 — Debtor.

NATIONAL BANK OF WATERLOO — Plaintiff

vs.

RODNEY WRIGHT and FRED HAGEN — Adversary No. L91-0227C
Defendants

RODNEY WRIGHT
Third-Party Plaintiff

vs.

FRED HAGEN
Third-Party Defendants.

ORDER RE: MOTION TO STRIKE JURY DEMAND

The matter before the court is Plaintiff's Motion to Strike Defendant Hagen's Jury Demand. The matter came on for telephonic hearing on October 9, 1992. Appearing were Jon Fister for Plaintiff and Thomas L. Fiegen for Defendant Hagen. After consideration of the oral arguments and briefs of the parties, the court now makes the following findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding in part, under 28 U.S.C. 157(b)(2)(I), and a non-core, related proceeding in part, over which the bankruptcy>court has jurisdiction under 28 U.S.C. 1334. The bankruptcy court is the appropriate tribunal for determining whether the right to jury trial exists, even if the bankruptcy court does not have the authority to conduct a jury trial. In re Washington Manufacturing Co., 128 B.R. 198, 200-01 (Bankr. M.D. Tenn. 1991).

PROCEDURAL HISTORY AND FINDINGS OF FACT

On November 14, 1991, Plaintiff National Bank of Waterloo (BANK) filed its complaint against Rodney L. Wright, alleging that Wright fraudulently procured a lease with Bank by placing the signature of Fred Hagen on a personal guarantee of the lease and that, therefore, the debt owed under the lease is nondischargeable under 11 U.S.C. 523(a)(2). Defendant Wright answered and stated as an affirmative defense that Hagen authorized him to place Hagen's name on the guarantee. Wright then filed a third-party complaint against Fred Hagen on January 9, 1992, alleging that Hagen orally authorized the execution of the guarantee. Third-party defendant Hagen filed an answer and motion to dismiss on February 26, 1992, denying the allegation and denying the jurisdiction of the bankruptcy court. By order of the court, The Honorable Michael J. Melloy, dated May 20, 1992, the motion to dismiss was continued pending the filing of an amended complaint by Bank. On May 26, 1992, Bank filed an amended and substituted complaint, naming Hagen as a codefendant. Bank argued alternatively that Wright either placed Hagen's name on the guarantee without Hagen's authority so that the debt should be nondischargeable, or that Wright did have authority and Hagen is liable on the guarantee. In his answer to the substituted complaint, Hagen denied giving Wright authority to place Hagen's name on the guarantee and also asserted affirmative defenses. Hagen stated additionally that he did not consent to the bankruptcy court's jurisdiction, and made demand for jury trial on the issues raised by Bank against him. On August 21, 1992, Bank

moved the court to strike the jury demand.

On March 26, 1992, Hagen filed a proof of claim in Wright's Chapter 7 bankruptcy case, claiming $1,089,825.70 owed on a number of promissory notes over several years (claim no. 99).

Division I of Bank's complaint alleging that debt owed by Wright is nondischargeable is a core proceeding; Division II of the complaint alleging liability by Hagen is a non-core, related proceeding.

DISCUSSION

Bank first alleges that by filing a proof of claim Hagen has submitted to the equitable jurisdiction of the bankruptcy court and has waived his right to jury trial. Hagen asserts that he has not consented to the bankruptcy court's jurisdiction in this proceeding and that filing a proof of claim is not in itself determinative. Hagen argues that the court must also examine the nature of the action before deciding whether he has the right to a jury trial.

The Seventh Amendment provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...." The United States Supreme Court in Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782 (1989), established the analysis for determining whether a party to an action in a bankruptcy proceeding retains a Seventh Amendment right to a jury trial. If an action is one which would have been recognized by an English law court in the late 18th century, seeks a legal rather than equitable remedy, and involves a "private right," a party may yet be entitled to a jury trial notwithstanding that Congress has assigned jurisdiction over the action to the bankruptcy court. Granfinanciera, 109 S.Ct. at 2790, 2797. The parties agree that, but for his proof of claim, Hagen has a right to a jury trial under the Granfinanciera analysis.

The first issue is whether Hagen has given up his right by filing a proof of claim. In Granfinanciera, the Court said that previous decisions had established that "a creditor's right to a jury trial on a bankruptcy trustee's preference claim depends upon whether the creditor has submitted a claim against the estate." Id. at 2799. In Katchen v. Landy, 382 U.S. 323, 86 S.Ct. 467 (1966), a creditor had filed claims against the estate; the trustee counterclaimed that the creditor had received a preference. The Court said that, while the creditor may have been entitled to a jury trial on the preference issue if he had not filed a claim, "when the same issue arises as part of the process of allowance and disallowance of claims, it is triable in equity." Katchen, 86 S.Ct. at 467.

The Court in Granfinanciera concluded that the same distinction applies in a trustee's fraudulent conveyance action against a creditor. If the creditor has filed a proof of claim in the bankruptcy case, the creditor no longer has a right to jury trial on the fraudulent transfer issue. The issues are submitted to the bankruptcy court's equitable jurisdiction because the court has "actual or constructive possession of the bankruptcy estate" and has the "power and obligation to consider objections by the trustee in deciding whether to allow claims against the estate." Granfinanciera, 109 S.Ct. at 2798, citing Katchen. Since the creditors in Granfinanciera had not filed claims against the estate, the trustee's action did not "arise 'as part of the process of allowance and disallowance of claims.' Nor is that action integral to the restructuring of debtor-creditor relations." Granfinanciera, 109 S.Ct. at 2799.

In Langenkamp v. Culp, 498 U.S. 42, ill S.Ct. 330 (1990), the court held that creditors who had filed proofs of claim were not entitled to a jury trial on the trustee's preference action. The Court reiterated the significance of filing a proof of claim in relation to preserving the right to jury trial where it otherwise exists.

> [B]y filing a claim against a bankruptcy estate the creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power. ... If the creditor is met, in turn, with a preference action from the trustee, that action becomes part of the claims-allowance process which is triable only in equity. ... In other words, the creditor's claim and the ensuing preference action by the trustee become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity jurisdiction. ... If a party does not submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances, the preference defendant is entitled to a jury trial.

Langenkamp, 111 S.Ct. at 331 (emphasis in original; citations omitted).

As explained in Langenkamp, it is not the filing of the proof of claim itself that eliminates the right to jury trial, but the fact that filing the proof of claim triggers the claimsallowance process. An action which is in substance a counterclaim or objection to the claim becomes "integral to the restructuring of the debtor-creditor relationship." Id.; Granfinanciera, 109 S.Ct. at 2798; In re Washington Manufacturing Co., 128 B.R. 198, 201-02 (Bankr. M.D. Tenn. 1991) (trustee not entitled to jury trial on fraudulent conveyance counterclaim, in substance an objection to creditor's claims).

In In re Silver Mill Frozen Foods, Inc., 80 B.R. 848 (Bankr. W.D. Mich. 1987), the court granted the trustee's motion to strike the jury demand of preference defendants who had filed claims. The court concluded that the proceedings were in substance identical to objections to the claims under 11 U.S.C. 502(d), which provides that the court shall disallow a claim if the trustee can recover property from the creditor under the listed avoidance powers. Silver Mill, 80 B.R. at 851. Submission to the jurisdiction of the bankruptcy court is a concept different from waiver and does not result in loss of the right to jury trial in every matter.

> It warrants emphasis that this rationale (i.e., that an appearance in bankruptcy court is deemed consent to jurisdiction] differs from the notion of waiver ... [I]n the context of bankruptcy proceedings ... creditors lack an alternative forum to the bankruptcy court in which to pursue their claims.

In re Marshland Development, 129 B.R. 6261 630 (Bankr. N.D. Cal. 1991), quoting Granfinanciera, 109 S.Ct. at 2799, n. 14.

Filing a proof of claim is consent to have objections and counterclaims resolved by the bankruptcy court. Langenkamp v. Culp, 111 S.Ct. 330 (1990). The proof of claim may not eliminate the jury right in other matters. Davis v. The Merv Griffin Co., 128 B.R. 78, 102 (D. N.J. 1991) (employee of debtor corporation who had filed proof of claim did not lose right to jury trial in related proceeding on state law claims against non-debtors). In In re Fulda Independent Co-op, 130 B.R. 967, 978 (Bankr. D. Minn. 1991), creditors with bankruptcy proofs of claim on file sued another creditor in state court on a number of theories. The defendant removed the case to the bankruptcy court. The court remanded to state court to allow plaintiffs to exercise their right to jury trial on state common law claims before determining their claims against the bankruptcy estate. And see In re Jensen, 946 F.2d 369 (5th Cir. 1991) (debtors did not waive jury right by filing bankruptcy petition; entitled to jury on state law claim against non-creditor third parties which would augment estate); In re Ozier, 132 B.R. 595 (Bankr. E.D. Ark. 1991) (court unwilling to find trustee waived jury right by filing complaint in bankruptcy court tracking debtor's state court claim).

In our case, Bank cites In re Edwards, 104 B.R. 890 (Bankr. E.D. Tenn. 1989), for the proposition that filing a proof of claim is waiver of the right to jury trial regardless of the nature of the proceedings involved. In Edwards, a creditor brought two actions, one in state court and one in bankruptcy court, against the debtor and a bank alleging dischargeability matters as well as state law claims. The proceedings were consolidated in bankruptcy court. The creditor had filed a proof of claim; the bank had not. All parties requested jury trial. The court, applying a "cursory analysis" of Granfinanciera, held that the bank was entitled to a jury trial. The court commented further that debtor and the plaintiff "arguably waived . . . the right to a jury trial" by submitting to the equitable jurisdiction of the bankruptcy court. Edwards, 104 B.R. at 893 and n. 5 (referring to the "Chase & Sanborn" decision). The remarks about waiver were unnecessary to the decision in that case. In re Washington Manufacturing Co,, 128 B.R. 198, 202 (Bankr. M.D. Tenn. 1991). Moreover, the Edwards case did not address the rationale for loss of jury right in some instances when a creditor files a proof of claim, as discussed above. See Granfinanciera, 109 S.Ct. at 2799 and n. 14.

As to Bank's claim against Hagen, Hagen has not waived the right to a jury trial simply by filing his proof of claim in Wright's case. He had no other forum to pursue his claims against Wright on the promissory notes. Applying the foregoing analysis to the facts of this case, the court finds that Bank's claim against Hagen is not part of the claims-allowance process, nor is the action "integral to the restructuring of the debtorcreditor relationship."

Hagen's claim against Wright was for $1,089,825.70 on a number of promissory notes made by Wright on various dates over a number of years. Bank's action is on a completely unrelated matter, involving a purported guarantee on a lease. The Bank's action is not an objection or other type of response to Hagen's proof of claim. The Bank's proceeding against

Hagen is not part of the claims-allowance process.

The Bank argues that the fact issue regarding Hagen's signature on the guarantee is integral to the restructuring of debtor-creditor relations since it determines whether the debt is dischargeable. This in turn determines whether Bank may get relief either from Wright or from Hagen. Both of Bank's claims are based on the same transaction, and the evidence will be the same in trial of each claim. However, as the Court in Granfinanciera explained, such "integral" actions are more narrowly described:

> The restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages . . . . The former may well be a "public right," but the latter obviously is not.

109 S.Ct. at 2798 n. 12 (citation omitted). Bank's action against Hagen on the guarantee is a state law claim, and is not integral to the restructuring of debtor-creditor relations. The interrelationship among Bank, Hagen and Wright's bankruptcy merely shows that the proceeding is a non-core, related proceeding. In re Dogpatch, U.S.A., Inc., 810 F.2d 782, 786 (8th Cir. 1987) (proceeding is related if outcome could "conceivably have any effect on the estate being administered in bankruptcy"). The similarity of evidence required in Bank's claims against both Wright and Hagen is an argument that both parts of the proceeding should be tried together. Hagen has not lost his right to jury trial by filing a proof of claim. Bank's motion will be denied.

ORDER

IT IS ORDERED that Plaintiff National Bank of Waterloo's Motion to Strike Defendant Hagen's Jury Demand is denied.

SO ORDERED ON THIS 25th DAY OF NOVEMBER, 1992.

William L. Edmonds
Chief Bankruptcy Judge