

In the United States Bankruptcy Court

for the Northern District of Iowa

MELVIN O. ROBERG and
LOUISE I. ROBERG
BRIAN L. ROBERG and
MARGARET A. ROBERG

Bankruptcy No. L92-00777W

Debtor(s).

Chapter 11

FIRST STATE BANK OF LeROY

Adversary No. 92-6263LW

Plaintiff(s)

vs.

NEW HAMPTON COOPERATIVE

Defendant(s)

ORDER RE: MOTION TO DISMISS OR ABSTAIN

The matter before the court is defendant New Hampton Cooperative's (CO-OP) motion seeking dismissal of the complaint for lack of subject matter jurisdiction under 28 U.S.C. § 157 or seeking the court's abstention from hearing the proceeding under 28 U.S.C. § 1334(c) (1). Hearing was held March 9, 1993 in Cedar Rapids, Iowa.

FINDINGS OF FACT

Robergs filed chapter 11 bankruptcies April 17, 1992. On December 16, 1992, First State Bank of Leroy (BANK) filed a "Complaint to Determine Lien Priority" regarding two property interests-- approximately \$22,000 to \$23,000 of proceeds from the Robergs' 1991 crops (CROP PROCEEDS) and approximately \$40,000 of Co-op stock and deferred patronage dividends (CO-OP STOCK). Count II of the Bank's complaint alleged that grain in which the Bank claimed a first security interest was sold, and the proceeds were applied to reduce the Robergs' account with the Co-op. Count III claimed a first security interest in the Co-op stock.

On December 18, 1992, Co-op filed a petition for contract and tort claims against Bank in the Chickasaw County District Court. The Co-op alleged that the Co-op agreed to sell crop inputs to the Robergs in exchange for the Bank's promise to advance money to the Robergs for crop expenses incurred at the Co-op. Bank filed an answer to the Chickasaw County action with counterclaims for conversion of the crop proceeds and claiming a security interest in the Co-op stock.

Co-op now requests the bankruptcy court to dismiss the Bank's lien priority complaint for lack of jurisdiction or to abstain from hearing the proceeding.

JURISDICTION

Co-op claims the bankruptcy court has no jurisdiction over the Bank's complaint because, although the action is styled a complaint to determine lien priority, it is actually a state law conversion claim. Indeed, the Bank raised essentially the same claims in its counterclaim to Co-op's state court petition.

The bankruptcy court has jurisdiction over "core proceedings arising under" Title 11. 28 U.S.C. § 1334(b), 157(a), 157(b). A non-exhaustive list of types of core proceedings is found at 28 U.S.C. § 157(b) (2) (A)-(O). The bankruptcy court also has jurisdiction over non-core "related" proceedings, but does not have authority to enter a final order in those matters without the parties' consent. 28 U.S.C. § 157 (c) .

Even though a proceeding nominally fits within one of the core proceedings listed in § 157(b) (2), the nature of the action may indicate it is not one "arising under" Title 11. In re Nanodata Computer Corp., 74 B.R. 766, 769 (W.D. N.Y. 1987). The categories in that list must be read in light of the definition of core proceedings in § 157(b) (1) so as not to exceed the court's jurisdiction delineated in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858 (1982). In re Rarick, 132 B.R. 47, 51 (D. Colo. 1991); Nanodata, 74 B.R. at 769; In re Alexander, 49 B.R. 733 (Bankr. D. N.D. 1985).

A lien priority dispute must involve property of the estate to fall within §157(b) (2) (K). Rarick, 132 B.R. at 51 (property at issue was never in chapter 11 bankruptcy estate; mandatory abstention elements were met); In re Denalco Corp., 57 B.R. 392 (N.D. Ill. 1986) (size of debt left no interest for the estate and chapter 7 trustee had disclaimed interest in property; proceeding was neither core nor "related"); Alexander, 49 B.R. at 737 (lien priority action between creditors dismissed for lack of jurisdiction; collateral was not property of debtor or estate).

The Robergs' interests in the Co-op stock is property of the estate and the lien priority dispute as to it is a core proceeding. However, the Robergs' interest in the crop proceeds is not property of the estate. The crop proceeds were allegedly applied to the Co-op's account sometime in the fall of 1991, well before the Robergs' bankruptcy filings in April, 1992. Complaint, Count II, ¶¶ 8-14; Exhibit B to Co-op's brief, p. 4 ¶¶ 6-7. Robergs had no interest in the crop proceeds as of commencement of the cases. 11 U.S.C. § 541(a) (1). Bank has suggested there may be some theory under which the proceeds could eventually be recovered for the estate; however, they would not become property of the estate unless they were recovered. See 11 U.S.C. § 541(a) (3), (4). Determination of the relative interests in the crop proceeds as between the Bank and the Co-op is not a core proceeding.

Moreover, the Bank's complaint to determine lien priority in the crop proceeds is in substance an action for conversion. Bank has alleged that the Co-op received grain proceeds and applied them to the Robergs' account with the Co-op, knowing that the Bank had a prior security interest in the proceeds. The Bank pleaded the same set of facts in its counterclaim for conversion in the state court action filed by the Co-op. The proceeds dispute is a state law claim which happens to have a bankruptcy connection. It is not a core proceeding. Nanodata, 74 B.R. at 771.

The bankruptcy court also has jurisdiction over proceedings that are not core proceedings but are related to a case under Title 11. 28 U.S.C. § 157(c). A proceeding is "related to" a bankruptcy case if "the outcome could conceivably have any effect on the estate being administered in bankruptcy." In re Titan Energy, Inc., 837 F.2d 325, 330 (8th Cir. 1988). Resolution of the crop proceeds dispute will determine which of the Robergs' creditors is entitled to the proceeds. A contingent or tangential effect is sufficient to confer jurisdiction over an action as a "related" proceeding. Id.

The court has jurisdiction over the crop proceeds dispute as a related proceeding and the Co-op stock dispute as a core proceeding. The motion to dismiss will be denied.

DISCRETIONARY ABSTENTION

Co-op asks the court alternatively to abstain from hearing the Bank's proceeding. The court may abstain in its discretion under 28 U.S.C. § 1334(c)(1) which provides:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

The priority dispute over the Co-op stock is a core proceeding involving property of the estate. The motion to abstain will be denied as to that count of the adversary proceeding. However, the crop proceeds issue is a non-core, related proceeding involving only state law issues concerning an interest that is not property of the estate. The motion to abstain will be granted as to that count.

When an action involves only state law issues and bears a limited connection to the bankruptcy case, abstention is particularly compelling. In re Titan Energy, Inc., 837 F.2d 325, 332 (8th Cir. 1988). The crop proceeds dispute raises no issues peculiarly within the bankruptcy court's expertise. The only likely effect on the bankruptcy case is to determine which of two creditors is entitled to the crop proceeds. Cf. In re Bowling Green Truss, Inc., 53 B.R. 391 (Bankr. W.D. Ky. 1985) (resolution of priority dispute between two creditors would have "direct and immediate impact" on the bankruptcy case).

The Robergs have not filed a reorganization plan, but have filed a proposed settlement agreement which provides for liquidation of other of the Robergs' assets. To the extent the Robergs desire to reorganize, abstention from hearing the crop proceeds issue will not hamper their efforts. See Titan, 837 F.2d at 331. The crop proceeds are not property of the estate.

There is no indication that abstention will prejudice the Robergs or other creditors. The crop proceeds issue is joined with the Co-op's complaint in Chickasaw County District Court. The court finds no reason to conclude the issues could not be timely adjudicated in that forum.

In contrast, denial of the motion to abstain could prejudice the rights of the Co-op. Co-op has a right to jury trial on its contract and tort claims in state court. Co-op's state court claims may be compulsory counterclaims to the Bank's conversion claim. See Fed. R. Bankr. P. 7013(a). The court would have jurisdiction over the Co-op's contract and tort state court claims only through pendent jurisdiction. In re Aerni, 86 B.R. 203, 207 (Bankr. D. Neb. 1988). If the crop proceeds dispute remained in bankruptcy court, Co-op would lose its right to a jury trial. Abstention by the bankruptcy court is especially appropriate in a non-core proceeding involving issues of state law when a party is entitled to a jury trial. In re Atlas Fire Apparatus, Inc., 56 B.R. 927, 934 (Bankr. E.D.N.C. 1986); In re Mauldin, 52 B.R. 838 (Bankr. N.D. Miss. 1985).

The court notes that the Co-op will not be prejudiced by denial of the motion to abstain from hearing the Co-op stock issue. That matter is a core proceeding involving property of the estate. The Co-op has filed the proof of claim and has submitted to the equitable jurisdiction of the bankruptcy court for resolution of that dispute. Lanqenkamp v. Culp, 498 U.S. 42, 111 S.Ct. 330 (1990).

ORDER

IT IS ORDERED that the New Hampton Co-operative's motion to dismiss is denied.

IT IS FURTHER ORDERED that the Co-op's motion to abstain is denied as to Count III of the First State Bank of LeRoy's complaint relating to Co-op stock or dividends. The motion to abstain as to Count II of the Bank's complaint relating to crop proceeds is granted.

So ORDERED ON THIS 16th DAY OF APRIL

William L. Edmonds
Chief Bankruptcy Judge