

In the United States Bankruptcy Court

for the Northern District of Iowa

S.O.S. ENTERPRISES, LTD.
Debtor.

Bankruptcy No. 95-10203KC
Chapter 11

ORDER RE MOTION TO DISMISS

This matter came on for hearing before the undersigned on January 11, 1996 on a Motion to Dismiss filed by Debtor and a Motion to Dismiss or Convert filed by the IRS. The appearances were: Dan Childers for Debtor; Martin McLaughlin for IRS; Gary Norton for Allstate Financial Corp.; Joseph Peiffer for the Unsecured Creditors Committee; Morris Eckhart for Creditor Gary Oberreuter; and John Schmillen, Assistant U.S. Trustee.

In a ruling filed January 24, 1996, the Court granted the Motions to Dismiss, concluding that dismissal of Debtor's Chapter 11 case is appropriate at this time. However, the Court took the following issues under advisement: (1) retention of jurisdiction over Allstate Financial's adversary proceeding, including its request for an injunction and (2) protection of Allstate Financial's postpetition security interest. This ruling will dispose of those issues. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(A), (D), (K).

STATEMENT OF THE CASE

Debtor owns a custom printing business which now has no financing and very few accounts remaining. Pursuant to order of the Court, Allstate Financial loaned a substantial sum to Debtor postpetition and was granted a postpetition security interest in all of Debtor's assets. Debtor also has a nondischargeable obligation to the IRS stemming from unpaid third quarter 1995 employment taxes.

On December 4, 1995, Allstate filed an adversary complaint, Allstate Fin. Corp. v. S.O.S. Enters. & J&G Custom Printing, Inc., Adv. No. 95-1197KC, asserting Debtor mismanaged its business toward the final stages of the Chapter 11 case. The complaint alleges that many of Debtor's secured assets disappeared or became unaccounted for, with some of these assets ending up at J & G Custom Printing, Inc., a printing business owned by the brother of Debtor's primary stockholder. As a result, Allstate filed its adversary complaint concerning the collateral, the turnover of records, and injunctive relief. It now requests that the Court retain jurisdiction over this adversary proceeding subsequent to the dismissal of Debtor's underlying bankruptcy case.

Allstate also asks that the Court protect its secured status by preserving its rights and priorities under the postpetition order for secured debt. All parties agree that it would be appropriate for the Court to order preservation of this secured position. At the time of hearing, the parties also agreed that the remedies sought in the adversary proceeding are remedies which are available in state court.

CONCLUSIONS OF LAW

Bankruptcy courts exercise full judicial power over core proceedings and limited judicial power over otherwise related or "non-core" proceedings. In re Wood, 825 F.2d 90, 91 (5th Cir. 1987). They are not, however, courts of general jurisdiction hearing any matters that may somehow involve debtors or former debtors. In re Ennis, 50 B.R. 119, 121 (Bankr. D. Nev. 1985). For a bankruptcy court to have jurisdiction over an adversary proceeding, the matter must be considered either core or, at least, "related to" the bankruptcy case. Wood, 825 F.2d at 93. In order for the court to assume "related to" jurisdiction, the proceeding at issue must "have some effect on the administration of the debtor's

estate." Abramowitz v. Palmer, 999 F.2d 1274, 1277 (8th Cir. 1993).

There is some dispute whether jurisdiction over an adversary proceeding can be retained by a bankruptcy court after dismissal of the underlying bankruptcy case. In re Rush, 49 B.R. 158, 161 n.1 (Bankr. N.D. Ala. 1985). As an initial matter, a court may retain jurisdiction over a related adversary proceeding after dismissal of a Chapter 11 case only if the Order of Dismissal expressly reserves such jurisdiction. In re Bockes Bros. Farms, Inc., No. 93-60881KW, slip op. 1, 2 (Bankr. N.D. Iowa 1995); In re Talandis, 95 B.R. 108, 110 (Bankr. S.D. Iowa 1989). In both Bockes Bros. and Talandis, the courts declined to retain jurisdiction because the parties had not expressly asked for retention of jurisdiction prior to dismissal. Bockes Brothers, slip op. at 2; Talandis, 95 B.R. at 109. This issue is not presented here because the Order of Dismissal retains limited jurisdiction for the sole purpose of deciding the issue of retaining jurisdiction over Allstate's adversary proceeding.

There is some authority that a bankruptcy court may use its discretion to hear an adversary proceeding, even if it originated in a subsequently dismissed bankruptcy case. In re Morris, 950 F.2d 1531, 1535 (11th Cir. 1992). In exercising this discretion, the court considers the following four factors: (1) judicial economy, (2) convenience to the parties, (3) fairness, and (4) comity. In re Porges, 44 F.3d 159, 163 (2d Cir. 1995); Morris, 950 F.2d at 1535. However, when dismissal of the main case will resolve a pending matter, or when adversary proceedings could best be handled in state court, retention of jurisdiction is not warranted. In re Nugelt, Inc., 142 B.R. 661, 670 (Bankr. D. Del. 1992). State court is the place to resolve an adversary proceeding that is based on state law and is of interest to no one except the adversaries, once the underlying bankruptcy case is dismissed. Chapman v. Currie Motors, Inc., 65 F.3d 78, 82 (7th Cir. 1995). In In re Walton, 80 B.R. 870, 874 (Bankr. N.D. Ohio 1987), the court stated:

Debtors' complaint seeks recovery for defendants' breaches of contract and RICO violations. This is not a proceeding arising under title 11. Neither is this a proceeding arising in a case under title 11

....

Debtors' complaint can be brought in another forum. This court need not retain this case and the related adversary on its docket when debtors' intention is not to achieve reorganization.... Thus, there is no basis for this court to retain jurisdiction of the Debtors' case.

The court in In re Stardust Inn, 70 B.R. 888, 890 (Bankr. E.D. Pa. 1987), found that when a bankruptcy case is dismissed, the court should decline to retain jurisdiction over adversary proceedings except under the most unusual and limited circumstances.

The bankruptcy court's jurisdiction to decide any matter is invoked by the filing of a bankruptcy petition. Absent that filing, the bankruptcy court is without power to decide the rights of any parties. On the other hand, during the pendency of a bankruptcy case, especially a reorganization case, the court enters orders that alter the rights of parties and the parties themselves enter into agreements that alter their rights; all because of the peculiarities of bankruptcy.

...

Section 349 acknowledges that some cases ... have progressed so far that judicial interference is needed to unravel or preserve the rights or parties.

In re Lerch, 85 B.R. 491, 493 (Bankr. N.D. Ill. 1988), aff'd 94 B.R. 998 (N.D. Ill. 1989). Where dismissal would not prejudice any party, the court should exercise its discretion to decline to retain jurisdiction over a related adversary proceeding. Stardust Inn, 70 B.R. at 890; see also Un-Common Carrier Corp. v. Oglesby, 98 B.R. 751, 753 (S.D. Miss. 1989) (stating that dismissal of the bankruptcy case usually does and should result in dismissal of all remaining adversary proceedings; the bankruptcy court has the power to retain jurisdiction, however, where dismissal would cause prejudice to one of the parties).

Pursuant to the Court's January 24, 1996 Order of dismissal, Debtor no longer has a bankruptcy case pending. Therefore, the outcome of Allstate's adversary proceeding will not affect Debtor's bankruptcy estate. The Court has found that Debtor's assets are secured by Allstate, the IRS obligation is nondischargeable, and conversion to Chapter 7

is not a viable option. All parties concede that Allstate's complaint can be brought in another forum.

This Court's interference is not needed to unravel or preserve the rights of the parties, other than to preserve Allstate's postpetition security position. This can be done in a summary fashion and does not require continuing oversight. As the adversary proceeding has not progressed far; having been filed on December 4, 1995, prejudice arising from relitigation is not a concern. No party will be prejudiced by dismissal of the adversary proceeding. The Court concludes in its discretion that Allstate's complaint concerning the collateral, surrender of Debtor's records, and injunctive relief should be dismissed along with Debtor's bankruptcy case.

WHEREFORE, the Court refuses to retain jurisdiction over Allstate Financial's adversary proceeding, including its request for an injunction.

FURTHER, Allstate Financial's postpetition security interest survives dismissal of Debtor's Chapter 11 case and remains in full force and effect according to the terms of the financing order.

SO ORDERED this 26th day of February, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge