

Mitchell v. Steinbrugge Civ No. 94-291-HA
Adv. Pro 92-3414

In re Hanna 390-33990-S11

6/13/94 District Ct. aff'g DDS

After several motions for summary judgment and a trial, the bankruptcy court issued oral findings and entered judgment against defendant for receiving preferential transfers totalling \$104,057.

The defendant appealed solely on the issue of whether the complaint was filed within the two year statute of limitations imposed by § 546(a)(1). The chapter 11 case was filed 7/27/90, and John Mitchell, Inc. was appointed chapter 11 trustee on 7/30/90. The complaint was filed 7/28/92.

The district court ruled that it was not necessary to decide whether the 2 year period started to run on the date the chapter 11 case was filed or on the date the trustee was appointed because the earliest deadline would be 7/28/92, the date the complaint was filed. The district court relied on Fed R Bankr P 9006 which states that the day of the event from which the designated period of time begins to run shall not be included in computing any period of time prescribed by the bankruptcy rules.

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U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

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TERENCE H. DUNN, CLERK

BY *TH* DEPUTY

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By *Donald M. Cinnamon*, Clerk
my Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In Re:)
) DANIEL C. HANNA, et. al.,)
))
) Debtor/Appellant.)
_____)

94-291 HA
Civil No. 92-3414
Bank. No. 390-33990-S11
390-34210-S11

OPINION AND ORDER

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HAGGERTY, Judge:

The matter before the court is the appeal from the

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judgment of the United States Bankruptcy Court for the District of Oregon dated July 30, 1993.

The district court acts as an appeals court from decisions of the bankruptcy court. The district court reviews the findings of fact of the bankruptcy court under a clearly erroneous standard; conclusions of law are reviewed de novo.

Daniels-Head & Assocs. v. William M. Mercer, Inc. (In re Daniels-Head & Assocs.), 819 F.2d 914, 918 (9th Cir. 1987).

BACKGROUND

On July 27, 1990, Daniel C. Hanna filed a petition for relief under Chapter 11 of the Bankruptcy Act. On July 30, 1990, Plaintiff-Appellee John Mitchell, Inc. was appointed as Trustee. Pursuant to 11 U.S.C. § 547(b), Mitchell filed an action to recover some pre-petition transfers made by Hanna to Defendant-Appellant John Steinbrugge. That action was filed on July 28, 1992.¹

Steinbrugge moved for summary judgment arguing that the Complaint to Recover Preferences was time barred pursuant to 11 U.S.C. § 546(a)(1) because 11 U.S.C. 546(a)(1)'s two-year limitation on bringing an action under 11 U.S.C. § 547(b) commenced when Hanna became a debtor in possession on the date the bankruptcy was filed, July 27, 1990. Mitchell asserted that the two-year limitations period commenced on the date he

¹ In their briefs to this court both parties stated that the Complaint to Recover Preferences was filed on July 30, 1992. However, the record indicates the Complaint to Recover Preferences was filed on July 28, 1992.

was appointed as the trustee of the bankruptcy estate, July 30, 1990.

In a letter opinion dated June 24, 1993, Judge Donal Sullivan ruled the two-year limitations period of 11 U.S.C. § 546(a)(1) commenced on the date on which the trustee was appointed, therefore, the Complaint to Recover Preferences was timely. Steinbrugge appeals this decision. Citing two recent Ninth Circuit cases, In re Softwaire Centre International, Inc., 994 F.2d 682 (9th Cir. 1993), modified, other grounds and Reh Den, Reh en banc Rejected, __F.3d__ (9th Cir. September 15, 1993) and In re San Joaquin Roast Beef, 7 F.3d 1413 (9th Cir. 1993), Steinbrugge argues that the bankruptcy court erred in concluding that the two-year limitations period in 11 U.S.C. 546(1)(a) commenced on the date that Mitchell was appointed as trustee rather than the date on which the bankruptcy was filed.

RULING OF THE COURT

Bankruptcy Rule 9006 states, in relevant part:

In computing any period of time prescribed or allowed by these rules...the day of the event...from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included...

Hanna filed this bankruptcy action on July 27, 1990.

Computing the two-year period pursuant to Bankruptcy Rule 9006, the last date on which the trustee could bring an action against Steinbrugge was July 28, 1992 if measured from the date on which the bankruptcy action was filed and July 31,

1992, if measured from the date on which Mitchell was appointed as trustee. The Complaint to Recover Preferences was filed on July 28, 1992. The court finds that the Complaint to Recover Preferences is within the two-year limitation of 11 U.S.C. 546(a)(1). Therefore, the court does not need to determine whether the bankruptcy court erred in concluding that the appointment of the trustee triggered the limitations period of 11 U.S.C. § 546(a)(1).

For the foregoing reasons, this court AFFIRMS the judgment of the United States Bankruptcy Court for the District of Oregon dated July 30, 1993.

IT IS SO ORDERED.

DATED this 10 day of June, 1994.


ANCER L. HAGGERTY
United States District Judge