

Appeals

Williams and Henderson v. Grassmueck
In re Donald and Julie Towry

Civil # 00-6088-HO
Bankr. Case #695-64263-
fra7

6/8/00

District Ct. (Hogan)
affirming oral ruling
of Judge Alley

Unpublished

The Appellants represented the Debtors in a Chapter 11 proceeding which began in Chapter 13 and which was eventually converted to Chapter 7. At the time of conversion, the two Appellants withdrew as counsel and, having unpaid legal bills, they filed applications for attorneys' fees having a first priority under Code § 507(a)(1).

Sometime after the attorneys' fee applications were filed, the trustee, the Debtors, the IRS and the ODR entered into an agreement purporting to settle a number of matters. One of the provisions earmarked homestead exemption proceeds for distribution to certain creditors having priority under § 507(a)(6). Appellant Williams filed an objection on the grounds that the settlement proposed to pay claims of a lesser priority ahead of the claims of the appellants. Mr. Williams withdrew his objection after being assured by the trustee's attorney that he believed there were sufficient funds in the estate to pay the administrative expense claims of the Appellants. The trustee's attorney later wrote a letter to Appellants saying there would not be enough money to pay Appellants' claims after all. Appellants then filed a motion to set aside the settlement and an objection to the distributions, but the court, while recognizing that a mistake was made, declined to disturb the settlement. The trustee thereafter filed a notice of intent to make interim distributions under the settlement agreement. Appellants' objection to the notice was overruled and an appeal was filed.

The District Court affirmed the Bankruptcy Court on the grounds that the Appellants should have appealed the order denying their motion to set aside the order approving the settlement. The appeal of the court's denial of their objection to the interim distribution constituted a collateral attack on the previous unappealed order. Failure to appeal a final order precludes a collateral attack on the order.

ORIGINAL

Williams, Henderson, Miller
FILED 6-8-00

Entered 6-8-00

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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
EUGENE, OREGON

BY 

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GARY G WILLIAMS and
JOHN L HENDERSON

Appellants,

v.

Civil No. 00-6088-HO
USBC No 95-64263-fra7

MICHAEL A GRASSMUECK

Appellee.

JUDGMENT

The decision of the bankruptcy court is affirmed.

Dated: June 7, 2000.

Donald M. Cinnamond, Clerk

by 

Lea Force, Deputy

JUDGMENT

DOCUMENT NO: _____

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c used c. Williams
Henderson, Mills
FILED 6-7-07

00 JUN -6 PM 12:41

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
EUGENE, OREGON

BY 

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TOWRY

GARY G. WILLIAMS and
JOHN L. HENDERSON,

Plaintiffs,

v.

MICHAEL A. GRASSMUECK,

Defendant.

Bankr. Case 95-64263 sub 7

Case No. 00-6088-HO

ORDER

BACKGROUND

This case began as a Chapter 13 proceeding, was converted to a Chapter 11 reorganization, and after the debtors failed to obtain confirmation of their Chapter 11 plan of reorganization, the case was converted to a Chapter 7 liquidation proceeding. Appellants were the Chapter 11 attorneys for debtors. Mr. Henderson also served as the debtors' attorney during the Chapter

ORDER - 1

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13 proceeding. Both attorneys withdrew after the matter was converted to a Chapter 7 proceeding. After conversion, both attorneys filed applications for attorneys' fees having a first priority under 11 U.S.C. § 507(a)(1).

Sometime after the attorneys filed their applications, the trustee (Michael Grassmueck, Inc.), the debtors, the IRS, and ODR entered into an agreement, purporting to settle a number of matters then pending in the Chapter 7 proceeding. One of the settlement provisions earmarked homestead exemption proceeds for distribution to certain creditors.¹

After the trustee served a motion and notice of intent to settle, appellant Williams filed an objection, arguing that the settlement proposed to pay claims of a lesser or equal priority of the administrative claims of the attorneys ahead of and before the claims of appellants, under 11 U.S.C. § 507(a)(1). Mr. Williams withdrew his objection after being assured by the trustee's attorney that he believed sufficient funds in the estate existed to pay the appellants' administrative claims. The bankruptcy court approved the settlement. The trustee's attorney later wrote a letter to appellants, stating there would not be sufficient assets in the estate to pay appellants' administrative claims after all. Appellants then filed a motion to set aside the

¹The agreement reads: "... (4) the estate shall pay from the homestead exemption funds all allowed pre- and post petition consumer claims having priority under 11 U.S.C. § 507(a)(6)..."

settlement and objection to the distributions under the settlement. The bankruptcy judge recognized that "a mistake was made," but declined to "disturb the settlement." (Appellants' Ex. 6). Appellants did not appeal this decision.

On July 9, 1999, the trustee filed a notice of intent to make interim distributions in which he proposed to pay all pre- and post petition consumer claims having priority under 11 U.S.C. § 507(a)(6), pursuant to the settlement agreement. Appellants' objection to this notice (in which they argued the court could not permit a disposition in derogation of the statute) was overruled on the ground that the property was given to the debtors pursuant to the homestead exemption, to dispose of as they pleased. The court noted that the fact that the trustee was the one actually making the distribution does not change the fact that the property is the debtors', under the homestead exemption.²

Appellants now seek review of this decision.

DISCUSSION

Appellants argue that their claims, as administrative expenses, should be paid prior to unsecured claims of individuals, in accordance with the priority established in 11

²The agreement provides "the trustee has sold the debtors' residence and is holding \$33,000.00 representing the debtors' homestead exemption subject to the estate's claims of setoff..."

U.S.C. § 507.³ They argue that administrative claims should be paid prior to the creditors provided for in § 507(a)(6).

Failure to appeal a final order precludes a collateral attack on the order. Great Lakes Higher Education Corp. v. Parde, 218 Br. 916 (9th Cir. BAP 1998).

In this action, appellants argue that "the bankruptcy court does not have the authority to approve a distribution of property which is in direct derogation of the statutory scheme enacted by Congress." Appellants essentially argue that the bankruptcy court cannot permit the distribution established in the settlement agreement. Thus, appellants are challenging the validity of provisions in the settlement agreement, which they should have done by appealing the denial of their motion to set aside the order approving the settlement.

³Bankruptcy Code § 507 provides

(a) the following expenses and claims have priority in the following order: (1) first, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28. . . . (6) sixth, allowed unsecured claims of individuals, to the extent of \$1,800 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

CONCLUSION

Appellants are barred from raising this claim at this juncture. Thus, the bankruptcy court is affirmed.

IT IS SO ORDERED.

Dated this 6th day of ~~May~~ ^{June}, 2000.

Michael R. Hogan
UNITED STATES DISTRICT JUDGE