Appeal (mootness)
Mootness
Dismissal (effect of)

U.S. v. Beam (In Re Beam) BAP # OR-97-1181-NJH
Bankruptcy Case # 693-60094-aer13

11/3/97 9th Cir. BAP Unpublished
(dismissing appeal of Radcliffe letter opinion and order)

After a trial, the bankruptcy court determined the amount of the government's tax claim. The government appealed. Prior to oral argument on the appeal, the Chapter 13 case was dismissed on Debtors' motion.

The BAP held the dismissal of the main case rendered the appeal moot. Upon dismissal, there was no "case or controversy" with respect to issues directly involving the reorganization of the estate. Dismissal had the effect of restoring the parties to their prebankruptcy positions. Upon dismissal, all rulings regarding the government's claim were vacated.

Rec'd 11-12-97

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re	BAP NO. OR-97-1181-NJH
FLOYD W. BEAM and, ELAINE M. BEAM,	BK NO. 693-60094-aer13
Debtors.	
UNITED STATES OF AMERICA, Appellant,	MEMORANDUM[1]
v.	
FLOYD W. BEAM; ELAINE M. BEAM, Appellees.	

FILED
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NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

Argued and Submitted on August 21, 1997
at Portland, Oregon

Filed - November 3, 1997

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Albert E. Radcliffe, Presiding

Before: Naugle,[2] Jones and Hagan, Bankruptcy Judges

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See BAP Rule 13 and Circuit Rule 36-3.

[2] Honorable David N. Naugle, Bankruptcy Judge for the Central District of California, sitting by designation.

E97-25(19

On appeal, the United States of America contests the bankruptcy court's order of February 4, 1997, which disallowed the penalty and interest portion of the claim filed by the Internal Revenue Service related to the tax liability of Floyd and Elaine Beam from 1981 through 1992. However, shortly before oral argument on this matter, the bankruptcy court entered an order dismissing the underlying Chapter 13 case at the debtor's request. Because there is no bankruptcy case currently pending, we VACATE the order and REMAND.

STATEMENT OF FACTS

Floyd and Elaine Beam (hereinafter, "debtors") sought relief under Chapter 13[3] of the Bankruptcy Code on January 11, 1993. On April 5, 1993, the Internal Revenue Service (hereinafter, the "IRS") filed a Proof of Claim for $137,821.50 related to taxes, penalties, and interest for tax years 1981 through 1992. The proof of claim provided a break-down of the debtors' tax liability by the category of debt (secured, unsecured priority, unsecured general). Within each category, the IRS further delineated the kind of tax, the annual tax period, the tax assessment date, the amount of tax due, and the interest accrued up to the petition date.

On April 15, 1993, the IRS filed its First Amended Proof of

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[3] Unless otherwise indicated, all references to Chapters, Sections and Rules are to the Bankruptcy Code, 11 U.S.C. §§ 101, et seq., and to the Federal Rules of Bankruptcy procedure, Rules 1001, et seq.

Claim for $125,454.54, which reflected a reduction in the general unsecured portion of the tax debt. The debtors filed an objection to the original Proof of Claim on December 9, 1993, contesting the validity of a pre-petition judgment entered by the United States Tax Court in connection with the debtors' tax liability from 1981 through 1985.

On December 23, 1993, the IRS filed its Second Amended Proof of Claim for $217,316.53, showing an increase in the priority and general unsecured components of the claim. In response, the debtors submitted their second objection in which they argued that the IRS's claim included only potential, not actual, tax liability, and that the substantial increase in claim amount represented a new and separate claim.

In order to resolve the debtors' objections to the IRS claim, the bankruptcy court held an evidentiary hearing on April 5 and 6, 1994. At the hearing, the court ruled that the Tax Court judgment relating to tax years 1981 through 1985 was entitled to collateral estoppel effect in bankruptcy. Regarding the remaining tax years, the court issued a letter ruling on September 8, 1995, which directed that certain adjustments be made to the debtors' tax liability. However, the court refrained from calculating the overall claim amount, including the interest and penalty portions, as it preferred to "leave those calculations to be made by the IRS . . . in accordance with [the court's] findings contained in [the letter ruling]." The letter ruling instructed the IRS to file an amended proof of claim

within sixty days, from whence the debtors would be permitted thirty days to file an objection.

After receiving the letter ruling, the IRS requested a clarification of the adjustments made by the bankruptcy court. In turn, the court issued a letter responding to the IRS's query. Thereafter, on November 22, 1995, the IRS filed its Third Amended Proof of Claim for $186,587.99.[4] This proof of claim, like the ones before it, appeared on a standard claims form with an attachment that further illustrated the components of the claim amount (category of debt, kind of tax, the annual tax period, the tax assessment date, the amount of tax due, and the interest accrued up to the petition date).

In rebuttal to the latest amended proof of claim, the debtors filed two objections *pro se* in which they disavowed the validity of their tax returns, opposed the application of the federal tax laws, and alleged the IRS had committed fraud by imposing a tax burden without due process, among other things.

On March 7, 1996, the bankruptcy court held a telephonic conference on the claims issue. During this conference, the debtors initially requested a dismissal of their case but then changed their position and asked for an opportunity to obtain new legal representation. For this latter reason, the court continued the hearing.

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[4] The Third Amended Claim listed a secured amount of $50,329.77, a priority unsecured amount of $70,948.62, and a general unsecured amount of $65,309.60.

The bankruptcy court held a second telephonic conference on June 12, 1996. With the debtors' counsel and IRS legal counsel participating, the court indicated that it would not consider the debtors' objections following the Third Amended Proof of Claim. However, after rejecting the debtors' defense, the court still declined to rule unequivocally in favor of the IRS, stating that the Third Amended Proof of Claim itself was "conclusory in form" such that the court was unable to determine the precise calculation of the claim, specifically the interest and penalties. The debtors' counsel agreed with this analysis, stating he found the IRS's claim somewhat confusing. Therefore, the court ordered the IRS to file a memorandum supplementing the Third Amended Proof of Claim, with the following instructions:

> I don't think any detailed explanation is required to show how the tax liability for the years 1981 through 1985 was arrived at except insofar as there may have been interest and penalties added on after the tax court decision, in which case I think that should be explicitly explained. But, for example, there are columns for the tax due, interest to petition date, and I believe there have been some penalties assessed as well.
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> I think what we require from the IRS is a statement for each tax year using the taxable income found by the Court--and I'm referring to tax years 1986 through 1992 at this point--how the tax is arrived at. In other words, how the tax is calculated. Does it come from the tax tables? Is some other source used? To the extent interest has been added onto that particular year, how the interest was calculated, with citation of authority. And to the extent penalties have been imposed, then again an explanation of how the penalty was calculated and a citation of authority.

The court imposed a filing deadline of July 26, 1996, for the IRS memorandum, and August 26, 1996, for the debtors' responsive

pleading. At the conclusion of the telephonic conference, the parties indicated they needed no further clarification on the subject nor required a written order encompassing the court's directions.

Prior to the deadline established by the court, the IRS filed a document entitled "Memorandum in Support of the IRS Proof of Claim, Dated November 22, 1995" (hereinafter, "Supporting Memorandum"). In its attempt to explain the debtors' tax liability, the IRS first detailed interest on taxes due from 1986 through 1992. In the body of the Supporting Memorandum, the IRS provided a detailed narrative description of the basis for the interest charged, by year and by status of tax, followed by a citation to the applicable Tax Code sections. Second, the IRS demonstrated its calculations of the tax penalties, including interest on the penalties, also based on the status of the underlying tax with a citation to authority. All exhibits were attached.

The debtors, in turn, filed an objection to the Supporting Memorandum. Although they noted an uncertainty as to the amount of the priority unsecured claim on account of the IRS's "failure to categorize penalties and interest," the debtors focused their objection away from the specific tax calculation; to wit: whether liability for tax year 1981 should be deemed secured, and whether the penalties added were punitive and therefore dischargeable.

In light of the Supporting Memorandum and objection thereto,

the bankruptcy court prepared a letter decision on January 2, 1997. The letter decision began by dismissing the debtors' objection on the merits. Nevertheless, the court determined that the IRS had not explained its calculations in the Supporting Memorandum in conformance with the court's oral directions of June 12, 1996. In the court's view, the IRS had made "only conclusory statements," lumped penalties with the interest thereon, and failed to separately itemize interest and penalties based on each Tax Code section. The court concluded by disallowing the majority of interest and penalties, which reduced the priority unsecured amount by $28,543.10 and the general unsecured amount by $37,974.62. Therefore, the allowed claim was limited to $120,070.27.[5] The letter decision contained no reference to the Bankruptcy Code or case authority regarding the foundation for disallowance.

The bankruptcy court entered an order on February 4, 1997. From this final determination of the claim amount, the United States of America has appealed. The debtors have not appealed or cross-appealed from this order.[6] However, on August 18, 1997, at

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[5] This amount is comprised of a secured claim for $50,329.77, a priority unsecured claim amount for $42,405.52, and a general unsecured claim for $27,334.98.

[6] In their Appellate Brief, Debtors address a number of issues which, though relating to the final order of the bankruptcy court, nevertheless do not relate to the issues raised by Appellant in its appeal. It is a steadfast rule of appellate procedure that an appellee may not contest a final order on appeal with a view to enlarging its rights thereunder without filing a Notice of Cross-Appeal. United States v. Bajakajian, 84 F.3d 334, 338 (9th Cir. 1996), cert. granted, 117 S.Ct. 1841

the debtors' request, the bankruptcy court entered an order dismissing the debtor's chapter 13 petition.

STATEMENT OF ISSUE

Whether the dismissal of the debtor's chapter 13 case renders this appeal moot.

STANDARD OF REVIEW

Jurisdictional issues are reviewed de novo. In re Hagel, 184 B.R. 793, 795 (9th Cir. BAP 1995). Mootness is a jurisdictional issue that the appellate court reviews de novo. In re Arnold & Baker Farms, 85 F.3d 1415, 1419 (9th Cir. 1996). This panel has the duty to raise the issue of mootness sua sponte when the parties fail to do so. In re Omoto, 85 B.R. 98, 99-100 (9th Cir. BAP 1988).

DISCUSSION

Ordinarily, the dismissal of a bankruptcy case renders an appeal from that case moot. In re Sierra Pacific Broadcasters, 185 B.R. 575, 576 (9th Cir. BAP 1995)(citing In re Universal Farming Indus., 873 F.2d 1334, 1335 (9th Cir. 1989). As a general rule, the dismissal of the underlying bankruptcy case

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(1997); Spurlock v. Federal Bureau of Investigation, 69 F.3d 1010, 1018 (9th Cir. 1995); Turpen v. City of Corvallis, 26 F.3d 978, 980 (9th Cir. 1994). Thus, we have not considered the issues raised by Debtors and only contemplate their arguments where they relate to the issues properly raised in Appellant's appeal.

"may indicate that no case or controversy remains with respect to issues directly involving the reorganization of the estate." In re Dahlquist, 751 F.2d 295, 298 (8th Cir. 1985)(quoted in In re Omoto, 85 B.R. 98, 100 (9th Cir. BAP 1988).

In the present case, the debtors requested dismissal of their bankruptcy case. An order dismissing the bankruptcy case was entered on August 18, 1997, three days before oral argument on this matter. That dismissal effectively restored the parties to their pre-bankruptcy status. Davis v. Courington (In re Davis), 177 B.R. 907, 910-11 (9th Cir. BAP 1995). All rulings regarding the objection to claims were vacated once the bankruptcy court entered its order dismissing the case. Therefore, there is "no case or controversy . . . with respect to issues directly involving the reorganization of the estate." In re Dahlquist, 751 F.2d 295, 298 (8th Cir. 1985). Therefore, because there is no bankruptcy case pending at the time of oral argument on this matter, we dismiss this appeal as moot. In re Income Property Builders, Inc., 699 F.2d 963, 964 (9th Cir. 1983).

We would add one final word of caution to the debtor. If the debtor's post-Tax Court and post-dismissal strategies include a new Chapter 13 case, the good faith thereof will be at issue under Section 1325(a)(3).[7]

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[7] The Panel has previously made clear in Greatwood v. United States of America (In re Greatwood), 194 B.R. 637, 641 (9th Cir. BAP 1996), aff'd, 120 F.3d 268 (9th Cir. 1997)(TABLE), that use of the bankruptcy court "solely as an alternative forum

CONCLUSION

This case is moot. On August 18, 1997, the bankruptcy court's order of dismissal at Debtors' request was entered. As no bankruptcy case is currently pending there is no reason to resolve the claims issue further. We VACATE the order of February 4, 1997, and REMAND to the bankruptcy court.

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for the resolution of a tax dispute is not a proper use of the Bankruptcy Code."