

Kasim v Equifax et al, Adversary No. 07-3144
In re Kasim , Case No. 04-30063
Appellate Nos. CV 08-627-HA and CV 08-628-HA

10/29/08

HA aff'g TMB

unpub

P08-10 and P08-11

Debtor filed adversary proceedings against credit reporting agency contending that it violated the Fair Credit Reporting Act by continuing to report a debt to Bank of America that the debtor had allegedly discharged in bankruptcy. The bankruptcy court dismissed, concluding that it lacked jurisdiction over the claim because the outcome of the litigation could have no effect on the debtor's closed bankruptcy estate.

The Debtor appealed to the district court arguing that the bankruptcy court had close nexus jurisdiction over the claims because they led to issues regarding whether the debt to Bank of America was discharged and whether the Bank violated the discharge injunction. The district court affirmed the bankruptcy court. It rejected the debtor's "close nexus" argument, noting that the "close nexus" analysis examines the progress of the bankruptcy proceeding itself and not the parties involved in the litigation."

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MAHMUD ABDUL SATTAR KASIM,
Plaintiff-Appellant,

v.

EQUIFAX INFORMATION SERVICES, LLC, a
foreign limited liability company, TRANS
UNION LLC, a foreign limited liability company,

Civil No. 08-627-HA

OPINION AND ORDER

and

BANK OF AMERICA, a foreign entity,
Defendant-Appellees.

HAGGERTY, Judge:

The matter before the court is the first of two appeals from the decision of the United States Bankruptcy Court for the District of Oregon (Bankruptcy Court). The appellees in this action are the consumer reporting agencies (CRAs) known as Equifax Information Services LLC (Equifax) and Trans Union, LLC (Trans Union) (collectively referred as CRAs). The parties elect to have the appeal heard by this court rather than the Bankruptcy Appeal Panel, which they are permitted to do. *See* 28 U.S.C. § 157. In such instances, this court may exercise jurisdiction under 28 U.S.C. § 158(a)(1) and the court acts as an appeals court from decisions of the bankruptcy court. The court concludes that oral argument is unnecessary, and for the reasons below affirms the ruling by the Bankruptcy Court.

BACKGROUND

Appellant Mahmud Kasim (appellant or Kasim) filed for bankruptcy in early 2004. Kasim received a "Chapter 11" discharge of his debts pursuant to 11 U.S.C. § 727. Following a dispute about plaintiff's credit report, Kasim filed this action on June 19, 2007, in the Bankruptcy Court. Kasim alleged that the appellees violated the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, *et seq.* Kasim Excerpt of Record (ER), at pp. 1-10.

Appellant claimed that the CRAs negligently and willfully failed to comply with the FCRA by failing to conduct a reasonable reinvestigation and failing to maintain reasonable procedures to assure that the credit reports that they issued were accurate. ER at pp. 7-8. Kasim alleges that due to these failures, he was denied credit wrongfully. ER at p. 7.

On August 1, 2007, the Bankruptcy Court granted Equifax's Motion to Dismiss for lack of jurisdiction. ER at pp. 38-39. Even though Trans Union had not yet entered an appearance, the Order included it because the claims were identical. *Id.* The Bankruptcy Court concluded that appellant's FCRA claims against the CRAs did not involve a cause of action that was created by the bankruptcy code. ER at p. 55. Further, the Bankruptcy Court found that jurisdiction was lacking because the FCRA claims were unrelated to appellant's bankruptcy because the claims' outcome would not "alter the debtor's rights, liabilities, options or freedom of action, either positively or negatively," and would not impact the administration of the bankruptcy estate. ER at p. 55 (citing *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988)).

Kasim appealed this ruling (and a second, similar ruling pertaining to appellee-defendant Bank of America) to this court. Appellant asserts that the United States Bankruptcy Court for the District of Oregon erred in granting the Equifax motion to dismiss.

STANDARDS

The district court reviews the findings of fact of the bankruptcy court under a clearly erroneous standard, and conclusions of law, such as summary judgment decisions, 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). Whether the bankruptcy court had subject matter jurisdiction over appellant's claims is reviewed *de novo*. See *In re Valdez Fisheries Development Ass'n, Inc.*, 439 F.3d 545, 547 (9th Cir. 2006).

QUESTION PRESENTED

At issue is whether (1) the Bankruptcy Court erred by ruling that it did not have subject matter jurisdiction over plaintiff's claims arising under the FCRA, or (2) by ruling that plaintiff had failed to state other claims against the CRAs for violating the discharge order under 11 U.S.C. § 524 and for declaratory relief under Fed. R. Bankr. Pro. 4007.

ANALYSIS

1. Jurisdiction

Appellant asserts that the Bankruptcy Court has jurisdiction over the FCRA claims pursuant to 28 U.S.C. § 1331. Appellant's Brief at 5-6. This statute provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Appellant argues that "because the Bankruptcy Court's jurisdiction is coextensive with the District Court's jurisdiction, it is erroneous to rule that the Bankruptcy Court did not have jurisdiction over the FCRA claims." *Id.* at 7.

The jurisdiction enjoyed by Bankruptcy Courts is more limited than district courts. *See In re Valdez Fisheries Development Ass'n, Inc.*, 439 F.3d at 549. Bankruptcy judges exercise the authority conferred to them under 28 U.S.C. § 157 and 28 U.S.C. § 1334. *In re Resorts Intern., Inc.*, 372 F.3d 154, 161 (3rd Cir. 2004). Specifically, a Bankruptcy Court may hear and decide "any or all cases under title 11 and any or all proceedings arising under title 11 *or arising in or related to* a case under title 11" pursuant to 28 U.S.C. § 157(a). 28 U.S.C. § 1334(b) (emphasis provided).

Proceedings "arising in" bankruptcy cases are referred to as "core proceedings." Core proceedings are those that would not exist outside of a bankruptcy, such as "matters concerning the administration of the estate," "orders to turn over property of the estate," and "proceedings to determine, avoid, or recover preferences." *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005) (quoting 28 U.S.C. § 157(b)(2)).

Bankruptcy courts also assert jurisdiction over "a much broader set of cases: those proceedings that are 'related to' a bankruptcy case." *In re Pegasus Gold*, 394 F.3d at 1193. These "non-core proceedings" are those in which the proceeding may not be against the debtor or the debtor's property, but the outcome could nevertheless "alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.* (quoting *In re Fietz*, 852 F.2d at 457).

Appellant acknowledged that his "claims for violating the FCRA are non-core proceedings." ER at p. 2. Instead, appellant relies upon the "close nexus" test described in *In re Pegasus Gold*, which appellant interprets as extending jurisdiction to resolving cases in which

there is a "close nexus" between the bankruptcy plan or proceeding and the matter in litigation. Appellant's Brief at 8-10.

The *In re Pegasus Gold* court described the "close nexus" test as asking whether a matter "affect[s] the interpretation, implementation, consummation, execution, or administration of a confirmed plan" or an incorporated litigation trust agreement. 394 F.3d at 1194. The court applied this test to determine "post-confirmation bankruptcy court jurisdiction" as opposed to pre-confirmation jurisdiction. *Id.*

Appellant contends that the "close nexus" test should be interpreted as providing jurisdiction if "there is a close nexus between Mr. Kasim's discharge and his claims that Equifax and Trans Union are misreporting his discharged debts." Appellant's Brief at 10.

Appellant goes on to assert that a close nexus exists between his bankruptcy and his credit reporting claims because of issues giving rise to questions such as "Did Mr. Kasim discharge the debts he disputed with Equifax and Trans Union? Were the creditors enjoined from collecting from plaintiff? What is the effect of the discharge? Did Equifax and Trans Union's determination that the debts were not discharged violate the discharge order?" Appellant's Brief at 10.

However, these issues do not rely on an "interpretation, implementation, consummation, execution, or administration" of a bankruptcy plan. There is no settlement or trust agreement requiring interpretation by the bankruptcy court, and no impact upon the estate itself.

The applicable "close nexus" analysis examines the progress of the bankruptcy proceeding itself and not the parties involved in the litigation. That test is not met under these

circumstances. The Bankruptcy Court concluded properly that it lacked subject matter jurisdiction and was compelled to dismiss the FCRA claims. ER at p. 39.

2. Declaratory Judgment and Contempt Claims

The Bankruptcy Court also addressed the possibility that some of appellant's other claims might be targeted against the CRA appellees, and concluded that there were no allegations "that either Equifax or Trans Union had any interest in the collection of debts or that they made any attempt to collect the debts, and, therefore, I don't think that the complaint states a claim against either Equifax or Trans Union." ER at p. 58.

Appellant construed this commentary as the Bankruptcy Court ruling "that because Equifax and Trans Union were not a party to the bankruptcy they cannot be held in contempt." Appellant's Brief at 12. Appellant contends that the Bankruptcy Court's commentary was erroneous, and that the appellees should be viewed as "acting in concert with Mr. Kasim's creditors in violating the Bankruptcy Court's discharge order." *Id.* at 17.

This argument is rejected as well. Appellant's bankruptcy complaint fails to identify the appellees as the defendants against whom the "violation of the discharge injunction" claims were made.

While the Bankruptcy Court may have been acted prudently in evaluating other claims as if the claims might have been leveled properly against the appellees, this court concludes that the complaint itself fails to allege that those claims – whether for civil contempt or for declaratory relief – were advanced against these appellees. This aspect of appellant's argument, as presented here, is without merit. Appellant's arguments in this regard do not justify reversal of the Bankruptcy Court's dismissal for lack of jurisdiction.

CONCLUSION

The Bankruptcy Court properly dismissed appellant's FCRA claims against the CRAs for lack of subject matter jurisdiction. These claims have a limited relationship to the bankruptcy estate and an inadequate "close nexus" upon which to confer jurisdiction. Appellant's arguments regarding other claims purportedly brought against these appellees are rejected as well. The ruling of the Bankruptcy Court is AFFIRMED.

IT IS SO ORDERED.

DATED this 28 day of October, 2008.

/s/ ANCER L. HAGGERTY

ANCER L. HAGGERTY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MAHMUD ABDUL SATTAR KASIM,

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Civil No. 08-628-HA

EQUIFAX INFORMATION SERVICES, LLC, a
foreign limited liability company, TRANS
UNION LLC, a foreign limited liability company,

OPINION AND ORDER

and

BANK OF AMERICA, a foreign entity,

Defendant-Appellees.

HAGGERTY, Judge:

The matter before the court is a second appeal from the final decision of the United States Bankruptcy Court for the District of Oregon (Bankruptcy Court) entered on September 25, 2007. The parties elect to have the appeal heard by this court rather than the Bankruptcy Appeal Panel, which they are permitted to do. *See* 28 U.S.C. § 157. In such instances, this court may exercise jurisdiction under 28 U.S.C. § 158(a)(1) and the court acts as an appeals court from decisions of the bankruptcy court. The court concludes that oral argument is unnecessary, and for the reasons below affirms the ruling by the Bankruptcy Court.

BACKGROUND

Appellant Mahmud Kasim (appellant or Kasim) filed for bankruptcy in early 2004. Kasim received a "Chapter 11" discharge of his debts pursuant to 11 U.S.C. § 727. Following a dispute about plaintiff's credit report, Kasim filed this action on June 19, 2007, in the Bankruptcy Court. Appellant claimed that appellee Bank of America (appellee) willfully failed to comply with its requirements under the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (FCRA). Kasim Excerpt of Record (ER), at p. 6.

The Bankruptcy Court concluded that it lacked jurisdiction to resolve appellant's FCRA claims against the appellee and similar claims against two consumer reporting agencies. Appellant advances two appeals challenging these rulings. For purposes of this appeal, appellant asserts that the Bankruptcy Court erred in granting the appellee Bank of America's motion to dismiss "any and all claims" from appellant against the appellee related to the FCRA. ER at p. 62. The motion was denied without prejudice as to appellant's claim "for civil contempt on the violation of the discharge order." *Id.*

STANDARDS

The district court reviews the findings of fact of the bankruptcy court under a clearly erroneous standard, and conclusions of law, such as summary judgment decisions, 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).

Whether the bankruptcy court had subject matter jurisdiction over appellant's claims is reviewed *de novo*. *See In re Valdez Fisheries Development Ass'n, Inc.*, 439 F.3d 545, 547 (9th Cir. 2006).

QUESTION PRESENTED

At issue is whether the Bankruptcy Court erred by ruling that it did not have subject matter jurisdiction over appellant's claims arising under the FCRA against appellee Bank of America.

ANALYSIS

Appellant contends that the Bankruptcy Court has jurisdiction over the FCRA claim against Bank of America pursuant to 28 U.S.C. § 1331. Appellant's Brief at 5-6. This statute provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Appellant argues that "because the Bankruptcy Court's jurisdiction is coextensive with the District Court's jurisdiction, it is erroneous to rule that the Bankruptcy Court did not have jurisdiction over the FCRA claims." *Id.* at 7.

The jurisdiction enjoyed by Bankruptcy Courts is more limited than district courts. *See In re Valdez Fisheries Development Ass'n, Inc.*, 439 F.3d at 549. Bankruptcy judges exercise the authority conferred under 28 U.S.C. § 157 and 28 U.S.C. § 1334. *In re Resorts Intern., Inc.*, 372 F.3d 154, 161 (3rd Cir. 2004).

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Appellant acknowledged that his "claims for violating the FCRA are non-core proceedings." ER at p. 3. Instead, appellant relies upon the "close nexus" test described in *In re Pegasus Gold*, which appellant interprets as extending jurisdiction to resolving cases in which there is a "close nexus" between the bankruptcy plan or proceeding and the matter in litigation. Appellant's Brief at 8-10. The *In re Pegasus Gold* court described the "close nexus" test as asking whether a matter "affect[s] the interpretation, implementation, consummation, execution, or administration of a confirmed plan" or an incorporated litigation trust agreement. 394 F.3d at 1194. The court applied this test to determine "post-confirmation bankruptcy court jurisdiction" as opposed to pre-confirmation jurisdiction. *Id.*

Appellant contends that the "close nexus" test should be interpreted as providing jurisdiction because "there is a close nexus between Mr. Kasim's discharge and his claims that Equifax and Trans Union [sic] are misreporting his discharged debts." Appellant's Brief at 9.

