

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
(dismissing appeal of Radcliffe
letter opinion and order)

Unpublished

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.

E97-25(10)

Rec'd 11-12-97
No

HD ✓
A.R. ✓

NOT FOR PUBLICATION

1
2 UNITED STATES BANKRUPTCY APPELLATE PANEL
3 OF THE NINTH CIRCUIT
4

5 In re

6 FLOYD W. BEAM and,
7 ELAINE M. BEAM,

8 Debtors.

BAP NO. OR-97-1181-NJH

BK NO. 693-60094-aer13

9 UNITED STATES OF AMERICA,

10 Appellant,

11 v.

12 FLOYD W. BEAM; ELAINE M. BEAM,

13 Appellees.

FILED

NOV 3 1997 *pi*

MEMORANDUM¹

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

14
15 Argued and Submitted on August 21, 1997
16 at Portland, Oregon

17 Filed - November 3, 1997

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

20 Honorable Albert E. Radcliffe, Presiding

21 Before: Naugle,² Jones and Hagan, Bankruptcy Judges
22

23 ¹ This disposition is not appropriate for publication
24 and may not be cited to or by the courts of this circuit except
25 when relevant under the doctrines of law of the case, res
26 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.

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

10
11 STATEMENT OF FACTS

12 Floyd and Elaine Beam (hereinafter, "debtors") sought relief
13 under Chapter 13³ of the Bankruptcy Code on January 11, 1993. On
14 April 5, 1993, the Internal Revenue Service (hereinafter, the
15 "IRS") filed a Proof of Claim for \$137,821.50 related to taxes,
16 penalties, and interest for tax years 1981 through 1992. The
17 proof of claim provided a break-down of the debtors' tax
18 liability by the category of debt (secured, unsecured priority,
19 unsecured general). Within each category, the IRS further
20 delineated the kind of tax, the annual tax period, the tax
21 assessment date, the amount of tax due, and the interest accrued
22 up to the petition date.

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

25 ³ Unless otherwise indicated, all references to Chapters,
26 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.

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

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

14 In order to resolve the debtors' objections to the IRS
15 claim, the bankruptcy court held an evidentiary hearing on April
16 5 and 6, 1994. At the hearing, the court ruled that the Tax
17 Court judgment relating to tax years 1981 through 1985 was
18 entitled to collateral estoppel effect in bankruptcy. Regarding
19 the remaining tax years, the court issued a letter ruling on
20 September 8, 1995, which directed that certain adjustments be
21 made to the debtors' tax liability. However, the court refrained
22 from calculating the overall claim amount, including the interest
23 and penalty portions, as it preferred to "leave those
24 calculations to be made by the IRS . . . in accordance with [the
25 court's] findings contained in [the letter ruling]." The letter
26 ruling instructed the IRS to file an amended proof of claim

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

3 After receiving the letter ruling, the IRS requested a
4 clarification of the adjustments made by the bankruptcy court.
5 In turn, the court issued a letter responding to the IRS's query.
6 Thereafter, on November 22, 1995, the IRS filed its Third Amended
7 Proof of Claim for \$186,587.99.⁴ This proof of claim, like the
8 ones before it, appeared on a standard claims form with an
9 attachment that further illustrated the components of the claim
10 amount (category of debt, kind of tax, the annual tax period, the
11 tax assessment date, the amount of tax due, and the interest
12 accrued up to the petition date).

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

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

24
25 ⁴ The Third Amended Claim listed a secured amount of
26 \$50,329.77, a priority unsecured amount of \$70,948.62, and a
general unsecured amount of \$65,309.60.

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

14 I don't think any detailed explanation is required
15 to show how the tax liability for the years 1981
16 through 1985 was arrived at except insofar as there may
17 have been interest and penalties added on after the tax
18 court decision, in which case I think that should be
19 explicitly explained. But, for example, there are
20 columns for the tax due, interest to petition date, and
21 I believe there have been some penalties assessed as
22 well.

23 I think what we require from the IRS is a
24 statement for each tax year using the taxable income
25 found by the Court--and I'm referring to tax years 1986
26 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

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

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

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

26 In light of the Supporting Memorandum and objection thereto,

1 the bankruptcy court prepared a letter decision on January 2,
2 1997. The letter decision began by dismissing the debtors'
3 objection on the merits. Nevertheless, the court determined that
4 the IRS had not explained its calculations in the Supporting
5 Memorandum in conformance with the court's oral directions of
6 June 12, 1996. In the court's view, the IRS had made "only
7 conclusory statements," lumped penalties with the interest
8 thereon, and failed to separately itemize interest and penalties
9 based on each Tax Code section. The court concluded by
10 disallowing the majority of interest and penalties, which reduced
11 the priority unsecured amount by \$28,543.10 and the general
12 unsecured amount by \$37,974.62. Therefore, the allowed claim was
13 limited to \$120,070.27.⁵ The letter decision contained no
14 reference to the Bankruptcy Code or case authority regarding the
15 foundation for disallowance.

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

21 ⁵ This amount is comprised of a secured claim for
22 \$50,329.77, a priority unsecured claim amount for \$42,405.52, and
a general unsecured claim for \$27,334.98.

23 ⁶ In their Appellate Brief, Debtors address a number of
24 issues which, though relating to the final order of the
25 bankruptcy court, nevertheless do not relate to the issues raised
26 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

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

3
4 STATEMENT OF ISSUE

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

7
8 STANDARD OF REVIEW

9 Jurisdictional issues are reviewed de novo. In re Hagel,
10 184 B.R. 793, 795 (9th Cir. BAP 1995). Mootness is a
11 jurisdictional issue that the appellate court reviews de novo.
12 In re Arnold & Baker Farms, 85 F.3d 1415, 1419 (9th Cir. 1996).
13 This panel has the duty to raise the issue of mootness sua sponte
14 when the parties fail to do so. In re Omoto, 85 B.R. 98, 99-100
15 (9th Cir. BAP 1988).

16
17 DISCUSSION

18 Ordinarily, the dismissal of a bankruptcy case renders an
19 appeal from that case moot. In re Sierra Pacific Broadcasters,
20 185 B.R. 575, 576 (9th Cir. BAP 1995) (citing In re Universal
21 Farming Indus., 873 F.2d 1334, 1335 (9th Cir. 1989)). As a
22 general rule, the dismissal of the underlying bankruptcy case

23
24 (1997); Spurlock v. Federal Bureau of Investigation, 69 F.3d
25 1010, 1018 (9th Cir. 1995); Turpen v. City of Corvallis, 26 F.3d
26 978, 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.

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

5 In the present case, the debtors requested dismissal of
6 their bankruptcy case. An order dismissing the bankruptcy case
7 was entered on August 18, 1997, three days before oral argument
8 on this matter. That dismissal effectively restored the parties
9 to their pre-bankruptcy status. Davis v. Courington (In re
10 Davis), 177 B.R. 907, 910-11 (9th Cir. BAP 1995). All rulings
11 regarding the objection to claims were vacated once the
12 bankruptcy court entered its order dismissing the case.
13 Therefore, there is "no case or controversy . . . with respect to
14 issues directly involving the reorganization of the estate." In
15 re Dahlquist, 751 F.2d 295, 298 (8th Cir. 1985). Therefore,
16 because there is no bankruptcy case pending at the time of oral
17 argument on this matter, we dismiss this appeal as moot. In re
18 Income Property Builders, Inc., 699 F.2d 963, 964 (9th Cir.
19 1983).

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

24
25 ⁷ The Panel has previously made clear in Greatwood v.
26 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

