

Jury demand  
7th amendment

Beck v. Advanta Mortgage Group, USA, Adversary No. 00-3338  
In re Southern Pacific Funding Corp., Case No. 398-37613  
Appellate No. 02-203-MA

04/29/2002 Marsh, affirming ELP unpublished

The District Court affirmed Judge Perris's ruling that the trustee does not have a right to a jury trial on his breach of contract claim. The Seventh Amendment preserves a right to jury trial for legal but not equitable claims. The court concludes that the trustee's breach of contract claim is vital to the claims allowance and disallowance process, and therefore the trustee does not have a right to a jury trial.

A creditor who files a proof of claim in a bankruptcy case waives his or her right to a jury trial on all matters related to the allowance or disallowance of the claim. The trustee's breach of contract claim in this case involves the same agreement that was the subject of the creditor's disallowed claim, which could be reconsidered. Because resolution of the trustee's contract claim could have an effect on the creditor's claim, his action is vital to the allowance or disallowance of that claim.

P02-3(9)

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PORTLAND, OREGON

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*Adv Pro CO-3338*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In re )  
)  
SOUTHERN PACIFIC FUNDING )  
CORPORATION, )  
)  
Debtor-in-Possession. )

\_\_\_\_\_)  
JEFFREY H. BECK, as Liquidating )  
Trustee of The SPFC Liquidating )  
Trust, )  
)  
Plaintiff, )

v. )

ADVANTA MORTGAGE GROUP, USA, )  
)  
Defendant. )

Case No. 02-203-MA

OPINION & ORDER

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1 - OPINION AND ORDER

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MARSH, Judge.

Plaintiff appeals the bankruptcy court's order granting defendant's motion to strike plaintiff's jury demand and denying plaintiff's motion to alter or amend the bankruptcy court's ruling granting defendant's motion.

#### BACKGROUND

Plaintiff (the trustee) is the liquidating trustee under Southern Pacific Funding Corporation's (SPFC's) confirmed second amended plan of reorganization. Defendant filed a proof of claim in the SPFC bankruptcy case, claiming payments from mortgage loans as collateral for an unliquidated amount, which was disallowed by the bankruptcy court. The trustee then filed the current proceeding, alleging breach of contract, arguing that defendant

failed to service and administer various loans transferred to it by SPFC in violation of the parties' written agreement. The trustee demanded a jury trial, to which demand defendant objected that because the trustee's claim is vital to the claims allowance process, it is subject to the equitable jurisdiction of the bankruptcy court.

The bankruptcy court granted defendant's motion to strike the trustee's jury demand, holding that the trustee's claim is vital to the claims allowance process because defendant's disallowed claim involves the servicing agreement that is the subject of the trustee's breach of contract action. The trustee then moved to alter or amend that order, which the bankruptcy court denied. The trustee now appeals both rulings. Because I agree with the bankruptcy court that the trustee's claim is vital to the claims allowance process, and thus the trustee is not entitled to a jury trial in this action, I affirm.

#### STANDARD OF REVIEW

A bankruptcy court's conclusions of law are subject to *de novo* review. Frederick S. Wyle Professional Corporation v. Texaco, Inc., 764 F.2d 604, 608 (9<sup>th</sup> Cir. 1985). A bankruptcy court's denial of a motion to reconsider is reviewed under an abuse of discretion standard. Id.

## DISCUSSION

### I. Jury Demand

The Seventh Amendment provides that "in Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..." Determining whether a party has a Seventh Amendment right to a jury trial requires that a distinction be made between legal and equitable claims. See In re: RDM Sports, 260 B.R. 915 (N.D. Ga. 2001). The Supreme Court has established the following two part test for drawing a distinction between legal and equitable claims: "first, we compare the statutory action to 18<sup>th</sup>-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature." Granfinanciera, S.A. v. Nordbery, 492 U.S. 33, 42 (1989). After balancing these two factors, giving more weight to the second, the court should decide whether Congress may assign, and has assigned, resolution of the claim to a non-Article III adjudicative body that does not use a jury as a fact-finder, i.e. consider whether the cause of action involves a matter of public or private right. Id. Even if, under the above analysis, a party would otherwise be entitled to a jury trial, "a bankruptcy litigant waives his right to a jury trial in proceedings 'vital to the bankruptcy process of allowance and disallowance of ... claims.'" In re: Hashemi, 104 F.3d 1122, 1125 (9<sup>th</sup> Cir. 1996).

The parties do not dispute the bankruptcy court's finding that, under the above framework, the trustee's cause of action is a legal claim for which a right to a jury trial existed at common law. Instead, the trustee argues the bankruptcy court erred in finding that his action is vital to the bankruptcy process of allowance and disallowance of claims, and thus he is not entitled to a jury trial.

A. Proof of Claim

Defendant cites to several cases stating that a debtor (and presumably the trustee on the debtor's behalf) who voluntarily invokes bankruptcy jurisdiction subjects himself to the consequences of such jurisdiction, including the forfeiture of a right to a jury trial. See In re: Hallahan, 936 F.2d 1496 (7<sup>th</sup> Cir. 1991); In re: McLaren, 3 F.3d 958 (6<sup>th</sup> Cir. 1993). I agree with the bankruptcy court that contrary authority is more persuasive.

For example, in Germain v. Connecticut National Bank, 988 F.2d 1323, 1329-30 (2d Cir. 1993), the court noted that a creditor that files a proof of claim "forsakes its right to adjudicate before a jury any issue that bears directly on the allowance of that claim," and that it is reasonable that "a creditor or debtor who submits to the equity jurisdiction of the bankruptcy court thereby waives any right to a jury trial for the resolution of disputes vital to the bankruptcy process." The court further noted that it would "not presume that the same creditor or debtor has knowingly and

willingly surrendered its constitutional right to a jury trial for the resolution of disputes that are only incidentally related to the bankruptcy process." Id.

In Hashemi, the Ninth Circuit stated that a party waives the right to a jury trial in proceedings "vital to the bankruptcy process of allowance and disallowance of ... claims." Hashemi, 104 F.3d at 1125. I agree with the bankruptcy court that the Ninth Circuit's statement in Hashemi and the court's holding in Germain are consistent, and logical. Holding that a creditor's filing of a claim constitutes a waiver of the right to a jury trial for both the creditor and debtor in all matters, when such matters are completely unrelated to the filed proof of claim, is inequitable. See RDM Sports, 260 B.R. at 919. Thus, the question then becomes whether the trustee's claim is vital to the claims allowance process.

#### B. Vital to the Claims Allowance Process

The trustee argues that because his action is not vital to the claims allowance process, he has a right to a jury trial.

The bankruptcy court concluded that if the trustee's action could affect the amount or allowance of a claim, that action is vital, citing to Germain. The bankruptcy court then agreed with defendant that the trustee's claim was vital to the claims allowance process because defendant's disallowed claim involves the same agreement that is the subject of the trustee's action, and

thus resolution of the breach of contract action could affect the amount of defendant's claim. The bankruptcy court further noted that while defendant's claim had been disallowed, because defendant could seek reconsideration of the denial of the claim, the potential for affecting the process rendered the claim vital.

While controlling case law regarding the specific issue presented herein is limited, a few courts offer guidance as to what types of claims are vital to the allowance and disallowance of claims. In Benedor Corp. v. Conejo Enterprises, Inc., 96 F.3d 346, 354 n.6 (9<sup>th</sup> Cir. 1996), the court noted that the bankruptcy court's equitable power to resolve disputes vital to the bankruptcy process of allowance and disallowance of the claims included the power to inquire into the validity of the claim. In Germain, the court stated that claims involving the determination of who is a valid creditor is vital.

In addressing whether a claim is vital to the process of allowance and disallowance of claims, the Ninth Circuit noted a similar dilemma in a footnote in Hashemi: "it is not clear, however, how the Benedor test would apply to a creditor's breach of contract claim, which only seeks to define, rather than restructure, the parameters of the parties' pre-petition relationship." Hashemi, 104 F.3d at 1125, fn. 1.

Here, we deal not with a creditor's breach of contract action, but the trustee's. The defendant maintains the right to seek



reconsideration of the disallowance of the claim for cause under 11 U.S.C. § 502(j). I note the trustee's argument that because defendant's claim was denied, for good reason, defendant will not seek reconsideration of that denial, and thus the breach of contract action is incapable of having any effect on the proof of claim. However, I agree with the bankruptcy court that because there is potential that the claim could be reconsidered, we must treat it as a potentially viable claim. The trustee's claims are related to the same agreements that are involved in defendant's claim and arose pre-petition. Any resolution of the trustee's action might have an affect on whether defendant's claim, based on a breach of the same agreement, is allowed, and if so, to what extent. Accordingly, I find that the trustee's action is vital to the claims allowance process, and therefore affirm the bankruptcy court's grant of the motion to strike.

#### B. Motion for Reconsideration

Given that I agree with the bankruptcy court's grant of the motion to strike, I likewise find that the bankruptcy court did not abuse its discretion in denying the trustee's motion for reconsideration.

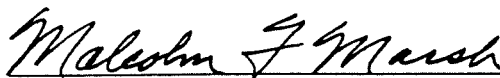
#### **CONCLUSION**

Because I agree with the bankruptcy court that the trustee's breach of contract action is vital to the claims allowance process, I AFFIRM the bankruptcy court's grant of the motion to strike.

Moreover, because I find the bankruptcy court did not abuse its discretion in denying the motion for reconsideration, I AFFIRM.

IT IS SO ORDERED.

Dated this 29 day of April, 2002.



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Malcolm F. Marsh  
United States District Judge