

Dated: September 05, 2013
The following is ORDERED:



Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
EARL BENARD BLASINGAME and
MARGARET GOOCH BLASINGAME,
Debtors.

Case No. 08-28289-L
Chapter 7

CHURCH JOINT VENTURE and
FARMERS & MERCHANTS BANK,

Movants,

vs.

EARL BENARD BLASINGAME and
MARGARET GOOCH BLASINGAME,

Respondents.

Emergency Motion to Prevent
Debtors from Prosecuting
State Court Motions to Void
Creditor Judgments
(Dkt. No. 433)

ORDER DENYING MOTION FOR INJUNCTION

BEFORE THE COURT is the motion of Church Joint Venture, a limited partnership, (“Church JV”) and Farmers & Merchants Bank of Adamsville (“FMB”) seeking an order enjoining

the Debtors, Earl Benard Blasingame and Margaret Gooch Blasingame, from pursuing two motions for relief from final judgment pursuant to Tennessee Rule of Civil Procedure 60.02(4), filed August 16, 2013, in the Chancery Court of McNairy County, Tennessee. The Debtors filed their objection to the motion on August 29, 2013, and the court conducted a hearing on September 4, 2013. Present were Bruce W. Akerly, representing Church JV; Tracey P. Malone, representing Farmers & Merchants Bank; David J. Cocke and Michael P. Coury, representing the Debtors; and C. Barry Ward representing the trustee in bankruptcy, Edward L. Montedonico (the "Trustee"). Church JV provided Exhibits 1-5 and the Debtors provided Exhibits A-D, which were admitted without objection. Church JV requested that the court take judicial notice of the proofs of claim filed by Church JV and FMB. There was no objection. Based upon the record submitted, the court makes the following findings of fact and conclusions of law.

JURISDICTION

Jurisdiction over a contested matter arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984).

Church JV predicated jurisdiction to entertain its motion upon 11 U.S.C. § 105(a), which provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from,

sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Church JV asserts that the Debtors lack statutory authority under the Bankruptcy Code or legal standing to prosecute the motions to vacate state court judgments, and that this court should issue an injunction to prevent them from doing so.

The Debtors deny that this court has jurisdiction to issue the injunction requested by Church JV. The Debtors' objection actually reaches the merits of Church JV's motion; i.e., the Debtors do not contest the authority of the bankruptcy court to issue an injunction in appropriate circumstances. They do, however, suggest that it would be imprudent and improper to issue the requested injunction in the present case.

At a minimum, this court has jurisdiction to determine whether it has jurisdiction to intervene between the parties in the state court action. *See, e.g., Bavelis v. Doukas (In re Bavelis)*, 453 B.R. 832, 844 (Bankr. S.D. Ohio 2011) ("Although the Court's authority to decide this adversary proceeding has been challenged, the Court has jurisdiction to determine whether it in fact has subject-matter jurisdiction." (citations omitted)); *Miner v. Mitchell (Matter of United Tractors, Inc.)*, 15 B.R. 719, 722 (Bankr. W.D. Mo. 1981) ("[I]t is fundamental that the bankruptcy court has jurisdiction to determine its own jurisdiction and that, once that determination is made, it may be challenged only by direct appeal and not collaterally." (citing 1 Collier on Bankruptcy ¶ 2.05, p. 150 (1978))). Moreover, as presented by Church JV, the motion implicates the administration of the bankruptcy estate, and thus is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The bankruptcy court has authority to enter orders concerning the administration of the bankruptcy estate subject only to appellate review.

FACTUAL BACKGROUND

Church JV is the assignee of two judgments rendered by the Chancery Court of McNairy County, Tennessee. The first judgment was entered on January 22, 1996, in favor of Chase Commercial Corporation, Case No. CH-6892, styled *JP Morgan Chase & Co. f/d/b/a Chase Commercial Corp. v. Aqua Air Aviation Corp., E. Benard Blasingame and Margaret Blasingame*. The second judgment was entered on November 2, 1998, in favor of FMB in the case of *Farmers & Merchants Bank v. Graphic Enhancement Technology Corp., E. Benard Blasingame and Margaret Blasingame*, Case No. CH-7194.

On August 15, 2008, the Debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code in the Bankruptcy Court for the Western District of Tennessee. This is the case that is presently pending. Edward L. Montedonico is the duly appointed and acting trustee in the case.

Church JV filed a proof of claim based on its judgment on September 11, 2008, in the amount of \$3,628,874.30. FMB filed a proof of claim based on its judgment on October 30, 2008, in the amount of \$5,539,707.52. No objections have been filed to either of these claims.¹

On September 9, 2009, Church JV, FMB, and the Trustee filed an adversary proceeding styled *Church Joint Venture, et al. v. Blasingame, et al.*, Adv. Proc. No. 09-0482-L, objecting to the Debtors' general discharge and asserting reverse alter ego/veil piercing claims against certain non-debtor defendants (the "Adversary Proceeding").

On February 22, 2011, this court entered its Memorandum on Plaintiffs' Motion for Partial Summary Judgment denying the Debtors' discharge on the basis of 11 U.S.C. § 727(a)(4)(A) (false oaths in connection with the filing of their bankruptcy schedules and statement of financial affairs),

¹ FMB has assigned its claim in the bankruptcy case to Church JV; thus throughout this order, the judgments will be referred to as the judgments or claims of Church JV.

and denying the discharge of Earl Benard Blasingame on the basis of 11 U.S.C. § 727(a)(5) (failure to satisfactorily explain loss of assets preceding the filing of his bankruptcy petition). Adv. Dkt. No. 117. The Clerk of the Bankruptcy Court entered his Notice of Entry of Judgment on February 23, 2011. Adv. Proc. Dkt. No. 118.

As the result of the entry of the judgment, the automatic stay terminated pursuant to 11 U.S.C. § 362(c)(2)(C). Church JV took steps through the McNairy County Chancery Court to enforce its judgments against the Debtors.

On September 9, 2011, the Trustee filed his motion for order authorizing him to sell the estate's causes of action against the Debtors and the non-debtor defendants set forth in the adversary proceeding to Church JV for the sum of \$100,000 cash together with a reduction of its claim by 25%. The motion was granted without objection by order entered on October 18, 2011. Dkt. No. 356. On February 22, 2012, the Debtors filed their Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60, made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 9024. Adv. Proc. Dkt. No. 240. That motion was provisionally granted on February 1, 2013 (Adv. Proc. Dkt. No. 356), and finally granted after remand of the case from the Bankruptcy Appellate Panel on April 8, 2013 (Adv. Proc. Dkt. No. 375). Trial on the objections to discharge in the adversary proceeding, Counts III, IV, and V, is set for November 4, 2013, in this bankruptcy court.

On April 6, 2012, the non-debtor defendants filed their motion to dismiss Counts I, II, VI, VII, and VIII of the Adversary Proceeding based upon a lack of standing and subject matter jurisdiction. Adv. Proc. Dkt. No. 252. The motion was opposed by Church JV. Adv. Proc. Dkt. No. 263. On July 31, 2012, the court entered its recommendation to the United States District Court

that the enumerated counts of the complaint should be dismissed on the basis of lack of subject matter jurisdiction as the result of the Trustee's sale of the estate's causes of action to Church JV. The district court adopted the recommendation by order entered November 5, 2012. Adv. Proc. Dkt. No. 346. On November 14, 2012, Church JV's claims against the non-debtor defendants were dismissed. Adv. Proc. Dkt. No. 336.

On November 16, 2012, Church JV filed a new complaint in the United States District Court for the Western District of Tennessee against the Debtors and the non-debtor defendants, Case No. 2:12-CV-02999, asserting essentially the same alter ego/reverse piercing theories that had been dismissed by this bankruptcy court. That complaint is pending before the Honorable S. Hardy Mays, Jr. The defendants have filed a motion to dismiss the complaint for failure to state a claim, which is also pending. The complaint is made by Church JV as a creditor of the Debtors. Debtors' Ex. C, ¶ 18.

On or about January 26, 2013, the Debtors filed their Motion for Relief from Judgment pursuant to Tenn. R. Civ. P. 60.02(4), which seeks relief from the final judgments held by Church JV on the ground that "it is no longer equitable for such judgment[s] to have prospective application." Tenn. R. Civ. P. 60.02(4). The motions further allege that Church JV should not be permitted to enforce the judgment prospectively against the Debtors and non-debtor defendants based upon the doctrine of gross laches as adopted by the Tennessee courts.

Upon filing of the Motion for Relief, Church JV removed the chancery court suits to the United States District Court. The district court remanded the suits to chancery court on July 29, 2013.

The Debtors have ties to each of the non-debtor defendants. The Debtors are co-trustees of Defendants Blasingame Family Business Investment Trust (the “Business Investment Trust”) and Blasingame Family Residence Generation Skipping Children’s Trust (the “Residence Trust”). The Business Investment Trust is the owner of Defendants G.F. Corporation and Blasingame Farms, Inc. Katherine Blasingame Church, the Debtors’ daughter, is a beneficiary of the Business Investment Trust and the Residence Trust, and is a stockholder in Defendants Fiberzone Technologies, Inc., and Flozone Services, Inc. Defendant Earl Benard Blasingame, Jr., is the Debtors’ son, and is a beneficiary of the Business Investment Trust and the Residence Trust. Defendant Blasingame Trust was established by the Debtors. They are its co-trustees and their children are its beneficiaries. Earl Benard Blasingame is the registered agent for service of process for the Defendant Aqua Dynamics Group. Its alleged principal place of business is the business address of Earl Benard Blasingame.

The Trustee is not a party to either the action pending in the district court or the action pending in the chancery court. As the result of its purchase of the estate’s claims against the Debtors and the non-debtor defendants, the action pursued by Church JV is pursued in its own name and for its own account. If successful, any funds recovered will belong to Church JV, not the bankruptcy estate. The causes of action asserted by Church JV in the district court are based upon federal law permitting a federal district court to declare the rights of parties with respect to controversies within its jurisdiction (28 U.S.C. § 2201(a)), and state law, but not federal bankruptcy law. Jurisdiction in the district court action is based upon diversity of citizenship (28 U.S.C. § 1332) and the request for declaratory judgment (28 U.S.C. § 2201).

If the Debtors are successful on their chancery court motions, Church JV will be precluded from seeking recovery of its judgments against the non-debtor defendants and the Debtors. It is not

clear, however, what the impact will be in that event, if any, on the claims asserted by Church JV against the bankruptcy estate.

If the Debtors are successful in the trial of Church JV's objections to their discharge, then Church JV will be precluded from pursuing collection of its judgment against them for that additional reason.

Church JV's claims against the non-debtor defendants will not be impacted whether or not the Debtors receive a discharge, except that it is possible that certain facts will be decided in connection with the trial of the objections to discharge that will bind the Debtors and/or Church JV in the district court.

ANALYSIS

Church JV asserts that the bankruptcy court should enjoin the Debtors from pursuing their motions to prevent prospective enforcement of its judgments because it asserts that the Debtors' actions are, in effect, objections to its proofs of claim. It asserts (but the Trustee does not), that the Trustee is the only person with standing to challenge the validity, extent, and enforceability of those claims. It further states that it is prevented by the automatic stay from responding to the Debtors' motions and it should not be required to do so.

Church JV provides no authority for its position that the Trustee is the only person who may object to its proofs of claim. Its position is clearly wrong. Section 502(a) of the Bankruptcy Code provides, "A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, *unless a party in interest ... objects.*" Any party in interest, including the trustee, or another creditor, or in some instances, the debtor, may object to a proof of claim. Although "party in interest" appears many times in the Bankruptcy Code, it is not defined in section 101. It has been

described as “an expandable concept depending on the particular factual context in which it is applied.” *In re River Bend-Oxford Assoc.*, 114 B.R. 111, 113 (Bankr. D. Md. 1990). It is “generally understood to include all persons whose pecuniary interests are directly affected by the bankruptcy proceedings.” *In re Morton*, 298 B.R. 301, 306 (6th Cir. BAP 2003) (quoting *In re Davis*, 239 B.R. 573, 579 (10th Cir. BAP 1999)). While it is true that an insolvent debtor may lack a pecuniary interest in the allowance of claims in a Chapter 7 case, where the debtor can show that disallowing the claim would produce a surplus to which the debtor would then be entitled, he or she is entitled to contest the claim. *Pascazi v. Fiber Consultants, Inc.*, 445 B.R. 124 (S.D. N.Y. 2011); see also *In re Olsen*, 123 B.R. 312, 313 (Bankr. N.D. Ill. 1991). The decisions relied upon by Church JV simply do not address the question of a debtor’s standing to object to proofs of claim filed in a Chapter 7 case.

Moreover, in this case, the Debtors have not, in fact, filed objections to Church JV’s proofs of claim. Instead, they have availed themselves of the rules of procedure provided by the Tennessee Supreme Court to try to obtain relief from the judgments against them on the basis of gross laches. If, and only if, they are successful, will the question of the impact of the chancery court’s decision upon the claims in bankruptcy be ripe for decision. As counsel for both parties have pointed out, the relief that could be granted under Tennessee Rule of Civil Procedure 60.02(4) relates to “prospective enforcement” only. It is not at all clear what impact an outcome in the Debtors’ favor would have in their bankruptcy case, which was commenced well before any decision will be rendered by the chancery court. It seems more clear, however, that an outcome favorable to the Debtors would result in a favorable outcome for the non-debtor defendants and an unfavorable outcome to Church JV in the district court case.

If the Debtors are successful in the chancery court, Church JV's interests in the district court lawsuit could be adversely affected, but the interests of the bankruptcy estate would be affected **not at all**. The bankruptcy estate has received all that it will ever receive for its claims against the non-debtor defendants – \$100,000.

Despite counsel's protestations that the causes of action being pursued on behalf of Church JV in the district court are causes of action sold to Church JV by the Trustee, the complaint in the district court refers only to Church's interests as a creditor. In its description of itself at paragraph 18 of the complaint, Church JV states:

At all times relevant to this action, Church JV and/or its predecessors were/was a creditor of the Debtors. Church JV filed proofs of claim in the Case and is owed in excess of \$4 million by Debtors. There has been no objection to the claims of Church JV against Debtors. The claims are valid, subsisting and owing by Debtors to Church JV. Debtors' Schedules indicate other persons and entities are also creditors of the Debtors.

This paragraph cannot refer to Church's status as successor to the Trustee because the Trustee was never a creditor of the Debtors.

No other paragraph of the complaint asserts the interest of Church JV as successor to the Trustee either. The complaint seeks only a declaration of Church JV's rights as a creditor. For example, at paragraph 70, the complaint states:

The Debtors over a long period of years have and continue to so completely and regularly commingle the assets of the three (3) Trusts and five (5) Corporations with their own individual assets and accounts such that the assets of the individuals, the Trusts and the Corporations are, in fact, and should, as a matter of law, be considered assets of the Debtors, subject to the claims of Church JV.

At paragraph 81, it states:

Church JV assert [sic] that the three (3) Trusts and five (5) Corporations named in this action have been used for an improper purpose and are and should be declared the alter egos of the Debtors, are shams to thwart, deceive and conceal assets from

the claims of Church JV, a creditor of the Debtors, and have been so misused and whose assets have been so repeatedly commingled that assets of same should be considered to be the assets of Debtors and made available to satisfy the claims of Church JV.

At paragraph 88, it states:

More specifically, Church JV asserts that the Debtors' transfers of assets and property by and between the Debtors, the Trusts and Corporations noted herein, as recited above, as well as any other transfers which may be demonstrated, were with the specific intent, direct or indirect, of delaying, hindering, or defrauding Church JV and other creditors, and, therefore, were fraudulent conveyances and devices within the meaning of applicable Tennessee avoidance law, and subject to being avoided for the benefit of Church JV ... and should be set aside and avoided by the Court.

At no point in the complaint does Church JV make reference to any section of the Bankruptcy Code giving it a right to recover as successor to the Trustee. Specifically, Church JV makes no reference to the trustee's so-called "strong arm" powers which incorporate state law remedies, provided at 11 U.S.C. § 544, or to the trustee's federal right to avoid certain fraudulent conveyances, provided at 11 U.S.C. § 548. Church JV is pursuing its own interests, not those of the bankruptcy estate, in the district court.

Church JV asserts that this bankruptcy court should prevent the Debtors from pursuing their motions in chancery court "to protect the policy and provisions of the Bankruptcy Code." This assertion is supported by a lengthy quotation from *Parker v. Goodman (In re Parker)*, 499 F.3d 616, 627-28 (6th Cir. 2007) to the effect that the bankruptcy courts are authorized to issue injunctions in aid of their jurisdiction notwithstanding the Anti-Injunction Act (28 U.S.C. § 2283).

The court of appeals has without doubt accurately stated the law: bankruptcy courts may issue injunctions to prevent litigants from pursuing actions in other courts that threaten the integrity of the bankruptcy estate. In this case, however, Church JV has failed to identify any way in which

the Debtors' motions *do* threaten the integrity of the bankruptcy estate, or the policy and provisions of the Bankruptcy Code. Church JV has identified no *asset* of the bankruptcy estate that will be impacted by the Debtors' actions. Nor has it indicated how the Debtors' actions will affect the *distribution* of the bankruptcy estate.

The Trustee, who has the express duty of preserving the estate, has taken no position beyond suggesting that judicial economy might favor preserving the status quo pending the outcome of the trial of the objections to the Debtors' discharge. In fact, however, whatever the outcome of the trial on discharge, the question of the enforceability of the chancery court judgments will remain, if not with respect to the Debtors, then with respect to the non-debtor defendants. Counsel for the Debtors, on the other hand, identified a real and immediate impact upon the Debtors if their motions are stayed: substantial discovery requests are pending in connection with the district court lawsuit that may prove unnecessary if the Debtors are successful in the chancery court.

The only harm identified by Church JV in going forward with the chancery court motions now, beyond the possibility that it may lose, is the possibility that it is prevented by the automatic stay from responding to the Debtors' motions. The automatic stay does not prevent a response once a debtor or trustee has initiated action. *See, e.g., In re Horkins*, 153 B.R. 793, 799 (Bankr. M.D. Tenn. 1992). The Debtors have not asserted that the automatic stay prevents Church JV from responding to their motions in the chancery court, and they would be estopped from doing so should they try.

CONCLUSION

For the foregoing reasons, Church JV's Motion to Prevent Debtors From Prosecuting State Court Motions to Void Creditor Judgments is **DENIED**.

cc: Debtors
Attorneys for the Debtors
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