

Dated: November 20, 2017
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, a Limited Partnership,
on behalf of Edward L. Montedonico,
Chapter 7 Trustee of the Bankruptcy Estate of
Earl Benard Blasingame and
Margaret Gooch Blasingame,
Plaintiff,
v.

Adv. Proc. No. 17-00048

Earl Benard Blasingame,
Margaret Gooch Blasingame, and
The Blasingame Family Residence
Generation Skipping Trust,
Defendants.

ORDER DENYING
MOTION TO CERTIFY ISSUES

BEFORE THE COURT is the motion of Plaintiff Church Joint Venture, a Limited Partnership ("Church JV"), on behalf of Edward L. Montedonico, Chapter 7 Trustee of the

Bankruptcy Estates of Earl Benard and Margaret Gooch Blasingame, seeking a certification by this court of issues for appeal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and Rule 7054(b) of the Federal Rules of Bankruptcy Procedure (Dkt. No. 59). Specifically, Church JV asks this bankruptcy court to direct entry of final judgment as to the denial of its claim seeking a declaration that the Blasingame Family Residence Generation Skipping Trust (“BRT”) was a self-settled trust on the basis that there is no just reason to delay appeal from that portion of the court’s decision. *See* “Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss,” Adv. Proc. No. 17-00048, August 17, 2017 (“Order on Motion to Dismiss”).

The bankruptcy court has discretion under Federal Rule of Bankruptcy Procedure 7054(b) to “direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.” Church JV’s prior motion for leave to file an interlocutory appeal of the court’s decision was denied by the Bankruptcy Appellate Panel of the Sixth Circuit (the “BAP”). The BAP left open the possibility that this court might certify the issue for appeal pursuant to Rule 7054(b). As the BAP pointed out in its order, Rule 54(b) certification requires the bankruptcy court to: (1) direct the entry of a final judgment as to one or more, but fewer than all, of the claims or parties, and (2) make an express finding that there is no just reason to delay appellate review. *Id.*, citing *GenCorp, Inc. v. Olin Corp.*, 390 F.3d 433, 442 (6th Cir. 2004).

The trial court may direct the entry a final judgement when it makes “a decision upon a cognizable claim for relief” that is the ultimate disposition of an individual claim. *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 7, 100 S. Ct. 1460, 1464 (1980). Rule 54(b) only applies when there are multiple parties or multiple claims. *General Acquisition, Inc. v. GenCorp, Inc., et al.*, 23 F.3d 1022, 1027-28 (6th Cir. 1994). In order to satisfy the requirement that there be

multiple parties, there must be more than two. *Id.* In this case there is one plaintiff and three defendants, so the requirement that there be multiple parties is met. The court, however, did not render a decision as to one but not all of the parties in its Order on Motion to Dismiss, and thus certification that a final judgment was rendered cannot be made on the basis that a final decision was made with respect to some but not all of the parties.

With respect to the requirement that there be a final decision on some but not all claims, the Court of Appeals has said that the concept of a “claim” for purposes of Rule 54(b) means an aggregate of operative facts that gives rise to a right enforceable by the courts. *McIntyre v. First Nat’l Bank of Cincinnati*, 585 F.2d 190, 192 (6th Cir. 1978). This court made that distinction in its order, finding on the basis of the underlying operative facts that the original Complaint raised two causes of action: (1) a request for a declaration that the assets of the BRT should be treated *as if* they were assets of the Debtors when their bankruptcy petition was filed because of some defect in the formation or operation of the BRT; and (2) a request for a declaration that the Debtors’ residence never was actually transferred to the BRT and thus was *in fact* an asset of the Debtors when their bankruptcy petition was filed. The original Complaint also raised ancillary claims for turnover and for attorney fees. The court found that the first cause of action was sold to Church JV and the second remained property of the bankruptcy estate. The Order on Motion to Dismiss constituted a final decision as to the first cause of action, which the Plaintiff has summarized as the “self-settled trust” claim. The court could direct the entry of a final judgment as to that part of its decision, but does not think it advisable to do so for reasons that are discussed below.

Even if the court were to direct entry of a final judgment as to that part of its decision, Rule 54(b) requires the additional certification by the trial court that there is no just cause to delay appeal. Whether to release a decision for immediate appeal lies within the discretion of the trial

court, but its discretion is “not unbounded.” *General Acquisition v. GenCorp*, 23 F.3d at 1030. The trial court must weigh the competing factors in the certification process and adequately explain its reasoning. *Id.* In this case, the court finds that there is just reason to delay appeal.

Church JV correctly asserts that the issue it seeks to appeal is the same as the issue to be determined in its appeal from the court’s order in Adversary Proceeding 17-00049. The complaint in that adversary proceeding makes the claim that another trust, the Blasingame Family Investment Trust (“BIT”), is a self-settled trust, and the assets of the BIT should therefore be made available for payment of the Debtors’ creditors. The court ruled in that adversary proceeding that that cause of action had been sold to Church JV and dismissed the complaint. Church JV appealed the court’s decision, and that appeal is pending before the BAP, Case No. 17-8029. A briefing schedule has been established. For reasons that are not entirely clear to the court, Church JV advances the pending appeal as a reason for certifying that there is no just reason to delay appeal of the court’s decision in this adversary proceeding. To the contrary, it seems a just reason to delay appeal.

Both appeals involve the interpretation of the court’s Order Authorizing Trustee to Sell Estate Claims and Causes of Action (Bankr. Dkt. No. 356) (the “Sale Order”) from the bankruptcy estate to Church JV. The court’s decision in both of these adversary proceedings involve factual determinations, not controlling issues of law. While the BIT is distinct from the BRT, and thus technically the adversary proceedings involve different parties, they are trusts established at or about the same time for which the Debtors serve as trustees and beneficiaries. Moreover, there is but one Sale Order which is the subject of both proceedings. As the Defendants correctly point out in their response to the Motion to Certify Issues, Rule 54(b) specifically reserves to the trial court the right to revise its orders at any time prior to final judgment. If the BAP determines that this court erred *as a matter of fact* in finding that the causes of action sold to Church JV included

the theory that the trusts were self-settled, it may revise its decision in this adversary proceeding appropriately. There is adequate time to do that because activities in this adversary proceeding have been stayed pending the outcome of yet another appeal, BAP Case No. 17-8009/8011. The parties' rights are fully protected while the appeals are being pursued.

In summary, the court finds a just reason to delay appeal of its decision concerning the self-settled trust issue. The question to be appealed in this adversary proceeding is the same question involving essentially the same parties that is already the subject of a pending appeal. If the court's conclusion concerning the scope of the Sale Order is reversed on appeal in BAP Case No. 17-8029, it may revise its decision in this proceeding. Justice does not require immediate appeal from the court's decision in this proceeding.

Accordingly, the motion to certify issues for appeal is **DENIED**.

cc: Debtors/Defendants
Attorney for Debtors/Defendants
Plaintiff
Attorney for Plaintiff
Chapter 7 Trustee
Attorney for Chapter 7 Trustee (if any)