

September 10, 2007

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE JEROME GRIGGS BEERY,
Debtor.

BAP No. NM-07-066

JEROME GRIGGS BEERY,
Plaintiff – Appellant,

Bankr. No. 94-10504-m7
Adv. No. 06-01170-m
Chapter 7

v.

ORDER AND JUDGMENT*

YVETTE J. GONZALES,
Defendant – Appellee,

and

PORTER DEES,
Defendant.

Appeal from the United States Bankruptcy Court
for the District of New Mexico

Before BOHANON, McNIFF, and THURMAN, Bankruptcy Judges.¹

BOHANON, Bankruptcy Judge.

Appellant Jerome Griggs Beery (“Debtor”) appeals an order granting Appellee Yvette J. Gonzales’ (“the Trustee”) Motion to Dismiss Debtor’s

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

¹ The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

complaint to quiet title and declare him the sole owner of real property commonly known as the Placitas Property (the “Quiet Title Action”). The bankruptcy court dismissed the Quiet Title Action on two grounds: (1) the automatic stay prevented Debtor from suing to obtain property of the estate and (2) collateral estoppel prevented Debtor from maintaining the Quiet Title Action as the issue had already been determined in the Trustee’s suit to determine the bankruptcy estate’s interest in the Placitas Property (the “Adversary Proceeding”).² Debtor argues the bankruptcy court erred in determining that (a) the automatic stay was still in effect when he filed the Quiet Title Action and (b) the issue determined in the Quiet Title Action was not similar to the issue in the Adversary Proceeding. We disagree and AFFIRM.

Standard of Review

We review an order granting a motion to dismiss for failure to state a claim *de novo*. *Moore v. Guthrie*, 438 F.3d 1036, 1039 (10th Cir. 2006). The bankruptcy court’s determination as to the scope of the automatic stay is a legal issue which we review *de novo*. *Eddleman v. U.S. Dept. Of Labor*, 923 F.2d 782, 790 (10th Cir. 1991); *In re Advanced Ribbons and Office Prods., Inc.*, 125 B.R. 259, 262 (9th Cir. BAP 1991). The bankruptcy court’s determination as to the applicability of collateral estoppel is also reviewed *de novo*. *McCart v. Jordana (In re Jordana)*, 232 B.R. 469, 476 (10th Cir. BAP 1999).

Background

Given the protracted history of this case and because the issues on appeal are purely legal in nature, we limit our description of the facts to those relevant to disposition of this appeal. Debtor filed for Chapter 7 relief on February 25,

² See *Judgment*, entered July 16, 2003, in Adversary No. 97-1059 (“Judgment”), in Appendix of Appellee Yvette J. Gonzales, Trustee (“Appellee’s Appx.”) at 51-55 and *Findings of Fact and Conclusions of Law*, entered July 14, 2003, in Adversary No. 97-1059 (“Findings of Fact and Conclusions of Law”), in Appellee’s Appx. at 27-50.

1994.³ On March 25, 1997, the Trustee filed the Adversary Proceeding against Debtor, his wife, and others to determine the nature, priority, and extent of liens and interests in property in the bankruptcy estate. That matter was tried on April 17, 2003. On July 14, 2003, the bankruptcy court issued findings of fact and conclusions of law regarding the respective parties' interest in various properties, including the Placitas Property, and entered Judgment in favor of the Trustee.⁴

On December 17, 1997, a Final Decree was filed, closing the bankruptcy case and granting Debtor his discharge.⁵ Approximately one month later, on January 16, 1998, noting that the Final Decree had been inadvertently entered, the bankruptcy court issued an order setting aside the Final Decree and reopened the bankruptcy case.⁶ It remains open.⁷

On August 16, 2006, Debtor filed the Quiet Title Action in the District Court for the Thirteenth Judicial District Court for Sandoval County, New Mexico.⁸ In the Quiet Title Action, Debtor asks the state court to determine ownership of the Placitas Property and to declare him its sole owner.⁹ He named the Trustee, Porter Dees, and all other unknown persons who may claim title to the real property as defendants. The Trustee removed the case to bankruptcy

³ This is a pre-BAPCPA case and all references to the Bankruptcy Code are pre-BAPCPA.

⁴ *Judgment, in Appellee's Appx. at 51-55 and Findings of Fact and Conclusions of Law, in Appellee's Appx. at 27-50.*

⁵ *Discharge of Debtor(s) and Final Decree Closing Case, in Appellant's Appendix at 22.*

⁶ *Order Setting Aside Final Decree and Reopening Case, in Appellant's Appendix at 23.*

⁷ *Docket Sheet, in Appellant's Appendix at 1.*

⁸ *Complaint to Quiet Title to Real Property, in Appellee's Appx. at 9-11.*

⁹ *Id.*

court. Porter Dees disclaimed any ownership interest in the property.¹⁰ On April 23, 2007, the Trustee filed a motion to dismiss or for summary judgment. On April 26, 2007, Debtor summarily objected to the Trustee’s motion. On May 12, 2007, the bankruptcy court granted the Trustee’s motion and ordered the Quiet Title Action dismissed “as a violation of the automatic stay in bankruptcy and under the principal [sic] of collateral estoppel.”¹¹ This timely appeal follows.

Discussion

A. The bankruptcy court correctly concluded that the collateral estoppel doctrine applied to the Quiet Title Action.

Debtor argues that the bankruptcy court erred in applying the collateral estoppel doctrine. Collateral estoppel is a doctrine that prohibits the relitigation between the same parties of issues of ultimate fact that have been “determined by a valid and final judgment” *Phelps v. Hamilton*, 122 F.3d 1309, 1318 (10th Cir. 1997) (internal quotation marks omitted). The purpose of the collateral estoppel doctrine is to protect parties from multiple lawsuits, prevent the possibility of inconsistent decisions, and conserve judicial resources. *Mont. v. United States*, 440 U.S. 147, 153 (1979). The doctrine of collateral estoppel can only be applied to subsequent actions when (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action. *B-S Steel of Kan., Inc. v. Tex. Indus., Inc.*, 439 F.3d 653, 662 (10th Cir. 2006).

Debtor argues that element one of the collateral estoppel doctrine was not

¹⁰ *Disclaimer of Defendant Porter Dees, in Appellee’s Appx.* at 16-17.

¹¹ *Order Granting Defendant Yvette J. Gonzales’ Motion to Dismiss* at 8, *in Appellant’s Appendix* at 21.

met because the bankruptcy court did not decide who was the owner of record of the Placitas Property in the Adversary Proceeding. We disagree. After holding a trial, the bankruptcy court concluded that “[t]he Debtor’s interest in the Placitas Property entered the Debtor’s estate at the moment he filed his Chapter 7 petition and is subject to the following liens”¹² In other words, the bankruptcy court determined that the Debtor’s estate owned the Placitas Property subject to certain liens. The bankruptcy court Judgment was not appealed and is final.

Accordingly, all elements of collateral estoppel have been met. We conclude the bankruptcy court correctly applied the collateral estoppel doctrine to the Quiet Title Action.

B. The bankruptcy court correctly concluded the automatic stay was still in effect when Debtor filed the Quiet Title Action.

Title 11 U.S.C. § 362(a) provides that a bankruptcy petition operates as a stay, applicable to all entities, of --

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the

¹² *Judgment* at 2, ¶ B, in Appellee’s Appx. at 53.

United States Tax Court concerning the debtor.¹³

Subsection (c) of § 362 governs automatic termination of the stay and provides, except as provided in subsections (d), (e), (f) and (h) of this section:

- (1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and
- (2) the stay of any other act under subsection (a) of this section continues until the earliest of--
 - (A) the time the case is closed;
 - (B) the time the case is dismissed; or
 - (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

In other words, § 362(c) provides that, unless relief is granted earlier by the court, a stay of an act against property of the estate expires when the property is no longer property of the estate; other stays expire at the earlier of the time that (1) the case is closed, (2) the case is dismissed, or (3) the debtor receives a discharge.

Debtor contends the automatic stay was no longer in effect after he received his discharge on December 17, 1997; thus, his filing of the Quiet Title Action on August 16, 2006, did not violate the automatic stay. Debtor further argues that the order re-opening the case did not re-impose the automatic stay nor did it alter the fact that his discharge had been granted. Debtor's reliance on § 362(c)(2)(C) is misplaced.

The Quiet Title Action was an attempt by Debtor to obtain possession, control and ownership of the Placitas Property, which the bankruptcy court had determined was property of the estate. Thus, the Quiet Title Action was an act against property of the estate. Moreover, the Quiet Title Action does not fit into one of the other acts described under § 362(a). Accordingly, the stay continues in effect until the property is no longer property of the estate. There being no

¹³ All future references to "Section" or "§" refer to the Bankruptcy Code, Title 11 of the United States Code, unless otherwise noted.

evidence that the Placitas Property was no longer property of the estate, the bankruptcy court correctly concluded that the automatic stay was still in effect when Debtor filed the Quiet Title Action and thus violated the automatic stay.

Conclusion

We conclude that the issue of whether Debtor had an interest in the Placitas Property was determined in the Adversary Proceeding, that determination is final, thus collateral estoppel prevents Debtor from maintaining the Quiet Title Action. Moreover, the automatic stay remained effective and prohibited Debtor from bringing the Quiet Title Action. For all of the above reasons, we AFFIRM.