FILED
U.S. Bankruptcy Appellate Panel of the Tenth Circuit

December 7, 2005

Barbara A. Schermerhorn Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE CARL G. DAVIS,	BAP No. WO-05-082
Petitioner.	ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the Western District of Oklahoma

Before McFEELEY, Chief Judge, CLARK, and BROWN, Bankruptcy Judges.

McFEELEY, Bankruptcy Judge.

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.

Appellant/Debtor Carl G. Davis, ("Davis"), petitions this court for a Writ of Mandamus ("Petition"). The Petition arises from an Order Granting Motion to Reconsider and Vacating Order Dismissing Adversary Proceedings entered by the bankruptcy court for the Western District of Oklahoma on July 7, 2005 ("Vacating Order"). Davis argues that the bankruptcy court erred when after dismissing an adversary proceeding as directed by an Order and Judgment entered by this Court on May 26, 2005 ("Order and Judgment") in BAP appeal number WO-04-057, the bankruptcy court entered the Vacating Order. Since Davis filed the Petition, the Tenth Circuit Court of Appeals has granted Appellee

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

Countrywide Home Loans a stay of the Order and Judgment pending appeal.[1] We conclude that the Petition is now moot.

I. Background

The Order and Judgment reversed and remanded an Order on Cross Motions for Summary Judgment entered by the bankruptcy court for the Western District of Oklahoma on the grounds that the order was barred by the doctrine of claim preclusion. This Court's Order and Judgment directed the bankruptcy court to dismiss the relevant adversary proceeding. Subsequently, on May 27, 2005, the bankruptcy court dismissed the adversary proceeding. However, upon a motion by Appellee to the bankruptcy court asking for reconsideration of the dismissal of the adversary proceeding on the grounds that it was going to appeal this Court's Order and Judgment, the bankruptcy court entered its Vacating Order. On August 31, 2005, Davis filed the Petition now before us.

II. Discussion

Before reaching the merits of an appeal, we must make an initial inquiry as to whether we still have jurisdiction. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). The Constitution authorizes federal courts to hear only "cases or controversies." U.S. Const., art. III, § 2, cl. 1. If there is no live case or controversy, then an appeal will be moot. *See Out of Line Sports, Inc. v. Rollerblade, Inc.*, 213 F.3d 500, 501 (10th Cir. 2000). A controversy is no longer live if the reviewing court cannot render "any effectual relief whatever." *Church of Scientology of California v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)).

In the Petition, Davis asks this Court to issue a Writ of Mandamus compelling the bankruptcy court to comply with this Court's Order and Judgment.

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[1] Accordingly, that portion of Appellee's Response to Petition for Writ of Mandamus denominated Motion for Stay Pending Appeal is denied in the entirety.

As the Order and Judgment is stayed, we can offer no effectual relief to Davis under the Petition. Therefore, the Petition is moot.

III. Conclusion

For the reasons set forth above, we find that we have no jurisdiction to render the requested relief and the Petition is denied.