

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

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

IN RE KOPEXA REALTY VENTURE
CO.,

Debtor.

BAP No. KS-03-082

EARL E. "SKIP" KOPP, and
CAROLYN K. KOPP,

Appellants,

Bankr. No. 95-21261-7
Chapter 7

v.

ORDER AND JUDGMENT*

CARL R. CLARK, Trustee, UNITED
STATES LIFE INSURANCE
COMPANY, and ALL AMERICAN
LIFE INSURANCE COMPANY,

Appellees.

Appeal from the United States Bankruptcy Court
for the District of Kansas

Before CLARK, CORNISH, and McNIFF, Bankruptcy Judges.

CORNISH, Bankruptcy Judge.

Earl E. Kopp (Earl) and Carolyn K. Kopp (Carolyn) (collectively, the "Kopps") appeal two Orders entered by the United States Bankruptcy Court for the District of Kansas: the first, an Order allowing Earl to participate in a hearing on the Chapter 7 trustee's Final Report and Application for Discharge (Participation Order); and the second, an Order denying the Kopps' motion to

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

amend the Participation Order. For the reasons stated below, this appeal is DISMISSED.

I. Background

The debtor is a Kansas general partnership that owned and operated a shopping center. The shopping center's primary tenant was insider C.K. Williams, Inc. (CK). The Kopps are partners of the debtor.

The debtor filed a case seeking relief under Chapter 11 of the Bankruptcy Code. Carl R. Clark was appointed as Chapter 11 trustee. The debtor's Chapter 11 case was ultimately converted to a case under Chapter 7, and Mr. Clark was appointed as the Chapter 7 trustee.

In 2000, the bankruptcy court entered an order approving a "Stipulation for Settlement of Claims" (Claims Stipulation) made by the Kopps, the trustee in the debtor's case, and the trustee in CK's Chapter 7 case (CK Trustee). The trustee and the CK Trustee agreed in the Claims Stipulation to release, discharge and abandon any claims against the Kopps, or persons and entities related to the Kopps. The Kopps, in turn, agreed to release any and all claims against the debtor and CK. They further agreed to "make no claims against any assets of the Estates, make no objection to any other claims in the Estates, and have no further involvement in either of the aforementioned bankruptcy proceedings, themselves or through any third parties."¹ Notwithstanding the Claims Stipulation, the Kopps assert that they have a right to any residual estate in the debtor's case.

In May 2003, the trustee filed a "Final Report and Application for Discharge" (Final Report), proposing to partially pay allowed unsecured claims against the debtor. Because allowed unsecured claims exceeded the net amount to be distributed, there was no residual estate to pay to the Kopps.

Earl and two creditors filed written objections to the Final Report, and a

¹ Claims Stipulation ¶ 2, *in* Appellees' Joint Appendix at Tab 1.

hearing was scheduled. In the meantime, apparently because of the Claims Stipulation, Earl requested permission to participate in litigation in the debtor's case (Participation Motion). The Participation Motion has not been included in this Court's record and, therefore, the specific requests made in it are unknown; but, it is undisputed that Earl sought permission to participate at the hearing on the Final Report.

Earl appeared at the hearing on the Final Report *pro se*. Carolyn did not enter an appearance. Recognizing Earl's Participation Motion, the bankruptcy court permitted Earl to participate at the hearing, and Earl presented argument as to why he believed the Final Report should not be approved. At the close of argument, the bankruptcy court approved the Final Report with some modifications not relevant to this appeal.

The bankruptcy court subsequently entered an Order granting Earl's Participation Motion, which has been defined above as the "Participation Order," and an Order approving the Final Report.² The Participation Order reflects the bankruptcy court's oral ruling allowing Earl to participate at the hearing on the Final Report. The bankruptcy court stated that it "finds and determines" that Earl "shall be allowed to participate in the hearing on the Trustee's Final Report and Account to the extent of presenting arguments concerning the same to the Court at the hearing held thereon."³

Both Earl and Carolyn moved to amend the Participation Order, even though Carolyn did not bring the Participation Motion or enter an appearance at

² The Kopps requested that the bankruptcy court reconsider its Order approving the Final Report, but their motion was denied. Simultaneously with the filing of this appeal, the Kopps filed a notice of appeal from the bankruptcy court's Orders approving the Final Report and denying their motion for reconsideration. That appeal has been dismissed. *See In re Kopexa Realty Venture Co.*, BAP No. KS-03-083 (10th Cir. BAP May 25, 2004) (Kopexa VII).

³ Participation Order, *in* Appellants' Joint Appendix at 7.

the hearing on the Final Report (Amendment Motion). The Kopps acknowledged in the Amendment Motion that the bankruptcy court granted Earl's Participation Motion, but they argued that the text of the Participation Order limited their "participation to the hearing on the Trustee's Final Report. The [Participation] Motion which was sustained by the court, sought participation, '. . . . [sic] on all issues affecting the Trustee's Final Report and distribution to creditors,'"⁴ The bankruptcy court entered an Order summarily denying the Amendment Motion (Amendment Order).

The Kopps timely filed a notice of appeal from the Participation Order and the Amendment Order.⁵ Having been entered in conjunction with the Order approving the Final Report, these Orders are "final" orders.⁶ The parties have consented to this Court's jurisdiction because they have not elected to have the appeal heard by the United States District Court for the District of Kansas.⁷

II. Discussion

As has been well-established by this Court in other decisions in this debtor's case, only "persons aggrieved" by a bankruptcy court order have standing to appeal.⁸ "Prerequisites for being a 'person aggrieved' are attendance and objection at a bankruptcy court proceeding."⁹ In addition, a "person

⁴ Motion to Amend ¶ 4, *in* Appellants' Joint Appendix at 8 (appearing to quote the Participation Motion, but this fact is unknown since that Motion is not referenced or included in this Court's record).

⁵ Fed. R. Bankr. P. 8002(a).

⁶ 28 U.S.C. § 158(a)(1).

⁷ Id. § 158(c); Fed. R. Bankr. P. 8001(e).

⁸ *See, e.g., In re Kopexa Realty Venture Co.*, 240 B.R. 63, 65 (10th Cir. BAP 1999) (Kopexa III) (citing cases); In re Kopexa Realty Venture Co., BAP No. KS-02-042, 2003 WL 21191108, at *4-5 (10th Cir. BAP May 21, 2003) (Kopexa V); *see also Kopexa VII*, BAP No. KS-03-083 (10th Cir. BAP May 25, 2004).

⁹ In re Weston, 18 F.3d 860, 864 (10th Cir. 1994) (quotation omitted), *quoted* (continued...)

aggrieved” is one whose “rights or interests are directly and *adversely* affected pecuniarily by the decree or order of the bankruptcy court.”¹⁰ Based on these standards, neither Carolyn nor Earl are “persons aggrieved” with standing to appeal the Participation Order or the Amendment Order. Furthermore, the relief sought by Earl in conjunction with the Amendment Order is moot, thus precluding appellate review. Accordingly, this appeal must be dismissed.¹¹ These points are discussed in turn below.

Carolyn is not a “person aggrieved” with standing to appeal the Participation Order or the Amendment Order because she did not sufficiently participate in the proceedings below. Carolyn did not bring the Participation Motion, and she did not enter an appearance at the bankruptcy court’s hearing on the Final Report where that Motion was considered. Not having brought the Participation Motion, she did not have standing to request that the resulting Participation Order be amended and, thus, she is not aggrieved by the Amendment Order. In sum, Carolyn is not a “person aggrieved” by the Participation Order or the Amendment Order, and she lacks standing to appeal those Orders.¹²

Earl also lacks standing to appeal the Participation Order, although for different reasons than those stated for Carolyn. As Earl acknowledges, the Participation Order was granted by the bankruptcy court, and he was allowed to participate at the hearing on the Final Report. Thus, the Participation Order did

⁹ (...continued)
in Kopexa III, 240 B.R. at 65 n.3.

¹⁰ Kopexa III, 240 B.R. at 65 (quotation omitted) (emphasis added) (citing cases).

¹¹ Id.; *see* Weston, 18 F.3d at 864; Kopexa V, 2003 WL 21191108 at *1.

¹² Weston, 18 F.3d at 864; Kopexa III, 240 B.R. at 65 n.3.

not adversely affect his interests, and he lacks standing to appeal it.¹³

Earl argued in the Amendment Motion that the Participation Order was not sufficiently broad – that the bankruptcy court should have allowed him to participate in all matters related to the Final Report. In the Amendment Order, the bankruptcy court refused to amend the Participation Order to expand its scope. We lack jurisdiction to review the bankruptcy court’s Amendment Order because any alleged point of error is moot in that there are no matters related to the Final Report left to be heard.¹⁴ The Final Report, as modified at the hearing, was approved, an Order approving the Final Report was entered by the bankruptcy court, no stay pending appeal of that Order was entered, and the trustee made distributions as outlined in the approved Final Report.

Even if we did have jurisdiction to consider this appeal, the undisputed facts in this case show that the bankruptcy court did not err in entering the Participation Order or the Amendment Order. Specifically, the bankruptcy court did not abuse its discretion in limiting Earl’s participation to the matter before it – the hearing on the Final Report, or in refusing to amend the Participation Order to expand its scope to unspecified, unknown future proceedings.¹⁵ Indeed, in light of the Claims Stipulation, any error that the bankruptcy court committed below was in granting the Participation Motion.

Finally, Earl argues in this appeal that the bankruptcy court denied him due process by refusing him an evidentiary hearing related to the allowance of a claim

¹³ See Deposit Guar. Nat’l Bank v. Roper, 445 U.S. 326, 333 (1980) (“A party who receives all that he has sought generally is not aggrieved by the judgment affording relief and cannot appeal from it.”).

¹⁴ U.S. Const. art. III, § 2, cl.1; see Kopexa V, 2003 WL 21191008 at *4 (citing In re Long Shot Drilling, Inc., 224 B.R. 473, 477 (10th Cir. BAP 1998)).

¹⁵ See, e.g., Moothart v. Bell, 21 F.3d 1499, 1504 (10th Cir. 1994); Brown v. Presbyterian Healthcare Servs., 101 F.3d 1324, 1331 (10th Cir. 1996); City of Stilwell v. Ozarks Rural Elec. Coop. Corp., 79 F.3d 1038, 1043 (10th Cir. 1996).

dealt with in the Final Report. This argument is not relevant to the propriety of the Participation Order or the Amendment Order, both of which allowed Earl to participate at the hearing on the Final Report. Rather, Earl's due process argument is relevant to his related, but separate appeal of the bankruptcy court's Order approving the Final Report, and we will consider it in our review of that appeal.¹⁶

III. Conclusion

For the reasons stated, this appeal is DISMISSED.

¹⁶ See Kopexa VII, BAP No. KS-03-083 (10th Cir. BAP May 25, 2004).