FILED
U.S. Bankruptcy Appellate Panel
of the Tenth Circuit
November 21, 1997
Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE MAX I. RAMSAY and V. GWENDOLYN RAMSAY, Debtors.	BAP No. KS-97-007
CHRISTOPHER J. REDMOND, Chapter 7 Trustee, Plaintiff—Counter-Defendant—Appellant, v. FEDERAL DEPOSIT INSURANCE CORPORATION, Receiver of Deseret Federal Savings, Defendant—Counter-Claimant—Appellee.	Bankr. No. 91-11129 Adv. No. 95-5131 Chapter 7 ORDER AND JUDGMENT*

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

Before CLARK, BOHANON, and MATHESON, Bankruptcy Judges.

PER CURIAM.

The issue is whether or not the FDIC-appellee has a claim against the bankruptcy estate. The trustee-appellant objected to the claim, arguing that it is barred because the debtors were not named as parties to a prior state court lawsuit against the partnership on the same debt. The Bankruptcy Court denied the

* This order and judgment has no precedential value and may not be cited, except for the purposes of establishing the doctrines of law of the case, res judicata, or collateral estoppel. 10th Cir. BAP L.R. 8010-2.

trustee's objection. We affirm.

THE STANDARD OF REVIEW

"For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable de novo), questions of fact (reviewable for clear error), and matters of discretion (reviewable for 'abuse of discretion')." Pierce v. Underwood, 487 U.S. 552, 558 (1988); *see* Fed. R. Bankr. P. 8013; Fowler Bros v. Young (In re Young), 91 F.3d 1367, 1370 (10th Cir. 1996); Wade v. Hatcher (In re Hatcher), 208 B.R. 959 (10th Cir. BAP 1997). With one limited exception discussed below, the Bankruptcy Court's findings of fact are not challenged by the appellant and the issues presented are questions of law. Accordingly, we review the decision de novo.

FACTS

The essential facts as found by the Bankruptcy Court show that the debtors are general partners of a California limited partnership that was indebted to a bank (the FDIC's predecessor-in-interest). The debt was secured by partnership real estate in Utah. Upon default the bank brought a foreclosure complaint in Utah against the partnership. The debtors were not named in the foreclosure action. Eventually the bank was awarded a judgment and foreclosed its lien. Upon liquidation of its collateral the bank had a deficiency of some $2,000,000 and subsequently obtained a judgment for this amount against the partnership.

When the debtors filed bankruptcy, the FDIC filed a proof of claim for the deficiency against themas general partners of the partnership. The trustee brought a complaint seeking a judgment that since the debtors were not parties to the foreclosure suit the FDIC did not have a claim against them, and therefore does not have a claim against their estate.[1] The Bankruptcy Court denied the trustee's

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[1] The trustee's complaint also sought equitable subordination of the FDIC's (continued...)

objection, concluding that since the debtors were general partners they are liable for the debts of the partnership under Utah law, which is controlling; and that the failure to name them as parties in the foreclosure suit did not bar allowance of the claim against them. See 11 U.S.C. § 502(b)(1). Additionally, the Court concluded that the Utah foreclosure action was still pending and the debtors could be added as parties.

DISCUSSION

The analysis begins with the Bankruptcy Code definition of a claim, which, in pertinent part, is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." 11 U.S.C. § 101(5)(A). A proof of claim is prima facie evidence of the validity and amount of the claim and a party objecting to it has the burden of proof to show why it should be disallowed. See Fed. R. Bankr. P. 3001(f); Fullmer v. United States (In re Fullmer), 962 F.2d 1463, 1466 (10th Cir. 1992).

Federal courts must give a state court judgment the same preclusive effect as that judgment would be given by a court of that state. 28 U.S.C. § 1738; Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984).

At common law, a partnership had no independent legal existence, but was instead simply group of individuals jointly obligated on the partnership's contracts. Restatement (2d) Judgments § 60 cmt. a (1982); J. William Callison, Partnership Law and Practice § 14.03, at 14-6 (1995). All living obligors who had the capacity to be sued had to be joined as defendants. Callison, supra, § 14.03, at 14-7. "A judgment against fewer than all the partners on the merits,

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[1] (...continued)
claim. The Bankruptcy Court dismissed this cause of action, stating that the trustee had not shown that the FDIC acted inequitably or had otherwise damaged the debtors or the estate. The trustee has not raised this issue on appeal.

because it merged and discharged the obligation of the partners against whom the judgment was rendered, served to prevent lawsuits against all other partners who were within the court's jurisdiction." Id. As explained by the Supreme Court:

> A judgment against one upon a joint contract of several persons, bars an action against the others, though the latter were dormant partners of the defendant in the original action, and this fact was unknown to the plaintiff when that action was commenced. When the contract is joint, and not joint and several, the entire cause of action is merged in the judgment. The joint liability of the parties not sued with those against whom the judgment is recovered, being extinguished, their entire liability is gone. They cannot be sued separately, for they have incurred no several obligation; they cannot be sued jointly with the others, because judgment has been already recovered against the latter, who would otherwise be subjected to two suits for the same cause.

Mason v. Eldred, 73 U.S. (6 Wall.) 231, 238 (1867). Utah has codified the common law rule that partners are jointly, but not jointly and severally, liable for contractual obligations of the partnership. Utah Code Ann. § 48-1-12(1)(b) (1997).

In Mason, the Supreme Court noted that despite the common law rule, "[t]he State can as well modify the consequences of a judgment in respect to its effect as a merger and extinguishment of the original demand, as it can modify the operation of the judgment in any other particular." 73 U.S. (6 Wall.) at 239. Such is the case in Utah. Section 15-4-2 of the Utah Code states: "A judgment against one or more of several obligors, or against one or more of joint or of joint and several obligors, shall not discharge a co-obligor who was not a party to the proceeding wherein the judgment was rendered." Utah Code Ann. § 15-4-2 (1997).

The plain language of this statute applies to the present case.[2] The debtors,

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[2] Although the parties did not present this argument to the Court, "'[w]hen an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify

(continued...)

as general partners, are joint obligors of the FDIC. The trustee concedes that the debtors were not parties to the state court action. Section 15-4-2 therefore operates to prevent any merger or bar of the FDIC's cause of action against them.[3]

The trustee notes that the judgment obtained by the FDIC is unenforceable against the debtors. This may be so. See, e.g., Utah R. Civ. P. 17(d) (judgment against an association, specifically including partnerships, binds joint property of association members, but not separate property of individual members "unless the member is named as a party and the court acquires jurisdiction over the member"). It is unnecessary for us to resolve this issue, however. The fact that the judgment did not discharge the debtors' liability means that the FDIC has, at a minimum, the right to file a separate action against the debtors. This cause of action falls within the definition of a claim. 11 U.S.C. § 101(5)(A).

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[2] (...continued)
and apply the proper construction of governing law.'" U.S. Nat'l Bank v. Indep. Ins. Agents of Am., Inc., 508 U.S. 439, 446 (1993) (alteration in original) (quoting Kamen v. Kemper Fin. Servs., Inc., 500 U.S. 90, 99 (1991)).

[3] The parties cited this section to the Bankruptcy Court, but apparently believed that it was limited to tort obligations based upon the prior language of Utah Code Ann. § 15-4-1. Section 15-4-1, prior to its amendment, stated: "In this chapter, unless otherwise expressly stated, 'obligation' includes a liability in tort; 'obligor' includes a person liable for a tort; 'obligee' includes a person having a right based on a tort; 'several obligors' means obligors severally bound for the same performance." Utah Code Ann. § 15-4-1 (1988) (emphasis added). In 1991, the statute was amended to specifically state that contractual obligations were included.

The prior version of section 15-4-1 reached contractual obligations. Chapter 15 of the Utah Code (in which sections 15-4-1 and 15-4-2 are found) is entitled "Contracts and Obligations in General." The use of the term "includes," particularly when contrasted with the use of the term "means" elsewhere in the statute, demonstrates that the definition was not limited to tort liability. Nor had the courts understood it to be so limited; the Utah Supreme Court construed section 15-4-2 as applicable to a contractual obligation to pay attorney's fees in Plateau Uranium Inv. Corp. v. Sugar & Ulmer, 8 Utah 2d 5, 326 P.2d 1022, 1023-24 (Utah 1958) (attorney's release of part of claim against insolvent corporation did not act to release from liability individuals who were also liable to pay the attorney's fees). Section 15-4-2 therefore applies to contractual obligations. The 1991 amendments to section 15-4-1 did not broaden the statute to include contractual obligations, but instead merely clarified existing law.

CONCLUSION

It is unnecessary for us to consider the remaining contentions. The Bankruptcy Court properly concluded that the FDIC has a valid and enforceable claim against the debtors. Accordingly, we AFFIRM.