FILED
U.S. Bankruptcy Appellate Panel
of the Tenth Circuit
July 8, 2008
Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE M. JULIA HOOK, also known as Mary Julia Hook, also known as Julia Hook and DAVID L. SMITH, also known as David Lee Smith, also known as David Smith, Debtors.	BAP No. CO-07-102
M. JULIA HOOK and DAVID L. SMITH, Plaintiffs – Appellants, v. LAWRENCE MANZANARES, JAMES S. CASEBOLT, RUSSELL CARPARELLI and GILBERT M. ROMAN, Defendants – Appellees.	Bankr. No. 06-15511-SBB Adv. No. 06-01766-ABC Chapter 11 OPINION*

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

Before McFEELEY, Chief Judge, CLARK,[1] and NUGENT, Bankruptcy Judges.

NUGENT, Bankruptcy Judge.

Debtors David Smith and Julia Hook appeal the bankruptcy court's Order Granting Defendants' Motion To Dismiss their complaint, which alleged that

* This opinion is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).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] Honorable Glen E. Clark, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Utah, sitting by designation.

Defendants, four Colorado state court judges, conspired to violate the Debtors' constitutional rights under the First, Seventh, and Fourteenth Amendments and violated the automatic stay by taking certain actions in the course of their judicial duties.[2] The bankruptcy court dismissed Debtors' Complaint on two main grounds: (1) the judges' absolute judicial immunity and (2) the Debtors' failure to state a claim for which relief may be granted. For the following reasons, we AFFIRM.

I. Factual Background

David Smith brought an action in state court alleging that his former attorney, Phillip Figa, and Figa's law firm, Burns, Figa &Will ("the Firm"), committed legal malpractice while representing him in his disbarment proceedings.[3] Figa and the Firm counterclaimed for breach of contract for nonpayment of attorney fees, adding Julia Hook as a counterclaim defendant because she had guarantied payment of Smith's legal fees. Debtors then added Racketeer Influenced and Corrupt Organizations Act ("RICO") claims to their complaint.[4] As a result, Figa and the Firm removed the case to federal district court. The federal district court granted partial summary judgment in favor of

---

[2] Debtors also appealed the bankruptcy court's order denying Debtors' request for temporary injunction and its order denying Debtors' motion to disqualify defendants' counsel. *See* Notice of Appeal *in* Appellants' Appendix ("APPX") at A-26. Debtors do not allege any error regarding these two orders nor were they mentioned in their brief. Any appeal of these orders is deemed abandoned. *See Headrick v. Rockwell Int'l Corp.*, 24 F.3d 1272, 1277-78 (10th Cir.1994) (issue not briefed in opening brief is deemed abandoned on appeal).

[3] Debtor was disbarred by the United States Court of Appeals for the Tenth Circuit (the "Tenth Circuit") in 1996 for filing frivolous appeals and failing to pay court ordered sanctions.

[4] 18 U.S.C. § 1961 *et seq.*

Figa and the Firm, dismissing both the RICO and legal malpractice claims and remanding the Firm's breach of contract counterclaim to state court.[5]

The Firm's breach of contract claim was tried to Judge Manzanares in Denver District Court on July 21, 2003. At trial, Debtors were prohibited from asserting legal malpractice as a defense to the breach of contract claim because that claim had been dismissed and Hook lacked standing to appeal that dismissal. The jury returned a verdict of $43,011.16 against Debtors, and judgment was entered accordingly (the "state court judgment").[6] Debtors appealed the state court judgment. A panel of the Colorado Court of Appeals, consisting of Judges Carparelli, Roman, and Casebolt (the "Appellate Judges"), affirmed the state court judgment. On July 7, 2006, Debtors filed a motion for rehearing.

On August 18, 2006, Debtors filed for bankruptcy. On August 21, 2006, Debtors filed Notice of [their] Bankruptcy Case with the Colorado Court of Appeals. On August 24, 2006, the Colorado Court of Appeals denied rehearing. On September 7, 2006, Debtors filed this adversary proceeding against Judges Manzanares, Carparelli, Roman, and Casebolt (collectively "Defendants"), asserting, first, that the Appellate Judges willfully violated the automatic stay by issuing the denial for rehearing postpetition and, second, that Defendants deprived them of their constitutional rights under 42 U.S.C. § 1983 and engaged in a conspiracy to violate their constitutional rights in violation of 42 U.S.C.

---

[5] Debtors appealed the grant of partial summary judgment to the Tenth Circuit, but it was affirmed.

[6] Debtors refer to three judgments ($43,011.16, $50,268.89 and $55,132.09) entered by Judge Manzanares in favor of Figa and the Firm in their Complaint. *See* Complaint at ¶ 4, *in* APPX at 10. These judgments were not provided to us. Appellees' response only refers to the $43,011.16 judgment. This Court's reference to "the state court judgment" encompasses any judgment entered by Judge Manzanares and affirmed on appeal by the Colorado Court of Appeals relating to the breach of contract claim.

§§ 1985(2) and (3), and 1986.[7] Debtors sued Defendants in both their official and individual capacities, seeking monetary damages and a declaration that the state court judgment is void *ab initio*.

On September 4, 2007, the bankruptcy court granted Defendants' motion to dismiss the Debtors' complaint for failure to state a claim for which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6). This appeal followed.

II. Appellate Jurisdiction

This Court has jurisdiction over this appeal. The order from which Debtors appeal is final for purposes of appeal, and the parties have consented to this Court's jurisdiction by failing to elect to have the appeal heard by the United States District Court for the District of Colorado.[8]

III. Standard of Review

This Court reviews a bankruptcy court's dismissal of a complaint on judicial-immunity grounds and for failure to state a claim *de novo*.[9] Questions involving the bankruptcy court's subject matter jurisdiction are also reviewed *de novo*.[10]

---

[7] Complaint, *in* APPX at 8-20. Figa and the Firm were also named defendants in this adversary proceeding. On February 12, 2007, Debtors filed a notice of dismissal pursuant to Rule 41, dismissing Figa and the Firm with prejudice.

[8] 28 U.S.C. § 158(a)(1) & (c)(1); Fed. R. Bankr. P. 8001-8002; 10th Cir. BAP L.R. 8001-1; *see Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (order is final if it "'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'") (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

[9] *See Deelen v. Fairchild*, 2006 WL 2507599 at *3 (10th Cir. 2006) citing *Gagan v. Norton*, 35 F.3d 1473, 1475 (10th Cir.1994) (*de novo* review of dismissal based on judicial immunity); and *Sutton v. Utah State Sch. for Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999) (*de novo* review of dismissal pursuant to Rule 12(b)(6)).

[10] *Henry v. Office of Thrift Supervision*, 43 F.3d 507, 511 (10th Cir. 1994).

IV. Discussion

A. Subject Matter Jurisdiction and the Rooker-Feldman Doctrine

We first consider whether the bankruptcy court had subject matter jurisdiction over Debtors' Complaint. Federal courts have an ongoing obligation to inquire into the basis of subject matter jurisdiction to satisfy themselves that jurisdiction to entertain an action exists.[11] This responsibility extends to inquiry into the jurisdiction of the trial court.[12] This duty applies irrespectively of the parties' failure to raise a jurisdictional challenge on their own.[13] Consistent with this duty and whenever a state-court judgment was challenged, this Court's review begins with the question of whether the Rooker-Feldman doctrine barred litigation of this action in the bankruptcy court.[14]

The Rooker-Feldman doctrine springs from two Supreme Court cases interpreting 28 U.S.C. § 1257(a). The doctrine precludes federal district courts from exercising appellate jurisdiction over actually-decided claims in state courts.[15] It also precludes federal courts from adjudicating claims inextricably intertwined with previously-entered state court judgments.[16] To determine whether a federal plaintiff's claim is inextricably intertwined with a state court

---

[11] *Image Software, Inc. v. Reynolds and Reynolds Co.*, 459 F.3d 1044 (10th Cir. 2006). *See also Campanella v. Commerce Exch. Bank*, 137 F.3d 885, 890 (6th Cir.1998).

[12] *See Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986) ("every federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it").

[13] *Campanella*, 137 F.3d at 890.

[14] *Ellis v. CAC Fin. Corp.*, 6 Fed. Appx. 765 n.2 (10th Cir. 2001) (When faced with a Rooker-Feldman issue, Court of Appeals must resolve it before turning to nonjurisdictional issues raised by the parties.)

[15] *Rooker*, 263 U.S. at 415-16.

[16] *Feldman*, 460 U.S. at 483 n.16.

judgment, we must pay close attention to the relief the plaintiff seeks.[17] "Where a plaintiff seeks a remedy that would "disrupt or undo" a state court judgment, the federal claim is inextricably intertwined with the state court judgment."[18] In general, courts must ask "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment."[19]

Reading the Debtors' Complaint makes it clear that the state court judgment is the source of the injuries for which they seek redress. Indeed, Debtors specifically request the state court judgment be voided as part of their relief.[20] The adversary proceeding appears to be an attempt to cloak a collateral attack on a state court's judgment as a federal constitutional claim. Debtors essentially seek to reverse their fortunes in state court by challenging the actions of the state trial and the state appellate judges in federal court. Because their claims can succeed only to the extent that the state courts allegedly wrongly decided the issues before it, Debtors' federal claims are "inextricably intertwined" with their state claims. Thus, under the Rooker-Feldman doctrine, the bankruptcy court lacked subject matter jurisdiction over Debtors' Complaint and dismissal of it was appropriate.[21]

---

[17] *Crutchfield v. Countrywide Home Loans*, 389 F.3d 1144, 1147 (10th Cir. 2004) (citing *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 476 (10th Cir. 2002), *overruled in part on other grounds by Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), *as recognized in Erlandson v. Northglenn Mun. Court*, 528 F.3d 785, 790 (10th Cir. 2008)).

[18] *Id.*

[19] *Kenmen*, 314 F.3d at 476.

[20] Complaint at 12 *in* APPX at 19 (request "an order declaring null and void *ab initio* [the state court judgment] entered by Judge Manzanares...").

[21] Exceptions to the Rooker-Feldman doctrine exist, but none apply in this instance. *See* 28 U.S.C. § 2241 (authorizing federal district courts to review state court decisions in habeas corpus proceedings) and *Crutchfield*, 389 F.3d at 1147 (10th Cir. 2004)(federal court may review general constitutional challenges to state law).

B. The New Standard for Dismissal for Failure to State a Claim.

Even if the bankruptcy court had subject matter jurisdiction, dismissal of Debtors' complaint was appropriate. Debtors claim the bankruptcy court erred in its application of the new standard for dismissal of a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Debtors assert "[their] Complaint gave [the bankruptcy judge] reason to believe that [they] had a reasonable likelihood of mustering factual support for their claims for relief under 42 U.S.C. §§ 1983, 1985(2) and (3), 1986, and 1988, 11 U.S.C. § 362(k), and the First, Seventh and Fourteenth Amendments . . . ."[22] We disagree.

The United States Supreme Court recently adopted a new standard for dismissal of a complaint for failure to state a claim in *Bell Atl. Corp. v. Twombly*.[23] The United States Supreme Court retired the *Conley* rule which stated: "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[24] Now, to survive a Rule 12(b)(6) motion to dismiss, the complaint must contain enough facts to state a claim to relief that is plausible on its face.[25] The new standard requires a plaintiff to "nudge his claims across the line from conceivable to plausible."[26] In discussing the new facial plausibility standard, the Tenth Circuit has stated that a court "must determine whether the complaint sufficiently alleges facts supporting all

---

22 Appellants' Opening Brief at 13.

23 127 S. Ct. 1955 (2007).

24 *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), *abrogated by Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955 (2007).

25 *Bell Atlantic*, 127 S. Ct. at 1974.

26 *Id*.

the elements necessary to establish an entitlement to relief under the legal theory proposed."[27]

Reviewing Debtors' Complaint, we conclude that it does not contain enough facts to support the requested claims for relief. Debtors allege three distinct causes of action: (1) deprivation of their federal constitutional rights in violation of 42 U.S.C. § 1983; (2) conspiracy to obstruct justice and deprive them of their constitutional rights in violation of 42 U.S.C. § 1985(2) and (3); and (3) violation of the automatic stay in violation of 11 U.S.C. § 362.[28] Debtors seek economic damages, damages for emotional distress, exemplary damages, an order declaring the state court judgments entered by Defendant Manzanares and affirmed by the Appellate Judges to be "null and void *ab initio*," and other unspecified legal and equitable relief, including preliminary and permanent injunctive relief.

The entire factual basis for Debtors' claims stems from actions taken by Defendants in the course of their official duties as judges. Specifically, with respect to Judge Manzanares, Debtors take issue with (1) his refusal to stay the breach of contract case pending Hook's appeal to the Tenth Circuit and Smith's appeal to the Colorado Court of Appeals, (2) his refusal to permit Debtors to present certain evidence at trial based on *res judicata*, (3) his denial of Debtors' request for a continuance of the trial, (4) his determination that a contract existed between Debtors and Figa and refusal to permit presentation of evidence regarding that issue, and (5) his refusal to direct a verdict in their favor. With respect to the Appellate Judges, Debtors take issue with (1) their jurisdictional determination that the Tenth Circuit did not have exclusive jurisdiction over the

---

[27] *Lane v. Simon*, 495 F.3d 1182, 1186 (10th Cir. 2007) (quotation omitted).

[28] Complaint at 12, *in* APPX at 19. The latter cause of action is directed solely against the Appellate Judges.

breach of contract case, (2) their affirmance of Judge Manzanares' evidentiary rulings and ultimately the state court judgment, and (3) their postpetition denial of Debtors' petition for rehearing.

All of the acts complained of were made in the course of performing Defendants' judicial functions. The Supreme Court has long held that judges are absolutely immune from liability under § 1983 for their judicial actions.[29] The only exception to this rule is if the judge acted in the "clear absence of all jurisdiction."[30] The scope of jurisdiction must be construed broadly and a judge is entitled to immunity even if he or she acted in error, maliciously, or outside the scope of his or her authority.[31]

Debtors allege that "Judge Manzanares was without jurisdiction to proceed to trial, to hold post-judgment proceedings, or to enter the referenced judgments."[32] Debtors claim the Tenth Circuit and/or the Colorado Court of Appeals had exclusive jurisdiction over the underlying case (*i.e.*, the breach of contract case). The Colorado Court of Appeals previously rejected this argument, finding that the Denver District Court, not the Tenth Circuit had jurisdiction over the case on remand from the U.S. District Court and that Judge Manzanares did not exceed his jurisdiction by refusing to stay the case pending Hook's appeal to the Tenth Circuit.[33] In light of this fact and because Colorado state district courts

---

[29] *Stump v. Sparkman*, 435 U.S. 349(1978); *Pierson v. Ray*, 386 U.S. 547 1967).

[30] *Stump*, 435 U.S. at 357, quoting *Bradley v. Fisher*, 13 Wall. 335, 351, 20 L.Ed. 646 (1872).

[31] *Id.*

[32] Complaint at ¶ 4, *in* APPX at A-10.

[33] Complaint at 6, *in* APPX at A-13.

are courts of general jurisdiction, the alleged actions of Judge Manzanares were not "in clear absence of all jurisdiction."[34]

Debtors implicitly allege the Appellate Judges acted outside the scope of their authority when they issued the Order Denying Rehearing postpetition allegedly in violation of the automatic stay. Although there is a split of authority on the issue, many courts have held that nonbankruptcy courts have concurrent jurisdiction to determine whether the automatic stay applies to nonbankruptcy proceedings before the court.[35] Moreover, the Tenth Circuit has held that Federal Rule of Bankruptcy Procedure 6009 allows debtors to bring and pursue appeals and that the automatic stay does not bar a nonbankruptcy court from ruling on such appeals.[36] We are bound by that precedent. In light of these authorities, the Appellate Judges' postpetition issuance of the Order Denying Rehearing was not "in clear absence of all jurisdiction." Thus, Defendants are entitled to judicial immunity.

---

[34] See Colo. Const. art. VI, § 9 ("The district courts shall be trial courts of record with general jurisdiction, and shall have original jurisdiction in all civil, probate, and criminal cases..."). A breach of contract case falls under a state district court's purview.

[35] *See, e.g., NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 939 (6th Cir. 1986); *In re Baldwin-United Corp. Litigation*, 765 F.2d 343, 347 (2d Cir. 1985); *Kearns v. Orr (In re Kearns)*, 161 B.R. 701 (D. Kan. 1993); *In re Bona*, 124 B.R. 11, 15 (S.D.N.Y.1991); *In re Mann*, 88 B.R. 427, 429 (Bankr. S.D. Fla. 1988).

[36] *See Chaussee v. Lyngholm (In re Lyngholm)*, 24 F.3d 89, 91-92 (10th Cir.1994) and *Autoskill Inc. v. National Educ. Support. Sys., Inc.*, 994 F.2d 1476, 1485-86 (10th Cir. 1993) (relying on the "plain language" of Rule 6009 to allow an appeal brought by the debtor). *But see Parker v. Bain*, 68 F.3d 1131, 1136 (9th Cir. 1995) (Rule 6009 does not trump the code's automatic stay).

Defendants are also entitled to Eleventh Amendment immunity.[37] The Eleventh Amendment immunizes a state from suit by a citizen.[38] It prohibits damage suits against states under §§ 1983, 1985 (conspiracy), and 1986 (failure to prevent conspiracy violations).[39] A suit against an individual in their official capacity is a suit against the state.[40] Under these circumstances, Defendants are immune from suit.

Because judicial immunity and the Eleventh Amendment bar Debtors' § 1983 claims for monetary damages against Defendants, Debtors are not entitled to monetary relief.[41] Neither are they entitled to an order declaring the state court judgment entered by Judge Manzanares and affirmed by the Appellate Judges to be "null and void *ab initio*." The only type of relief available to a plaintiff who sues a judge is prospective injunctive relief.[42] As the bankruptcy court correctly noted, Debtors' requested declaratory relief is one to correct an alleged past wrong. Since it is not prospective in nature, Debtors are not entitled to the requested declaratory order.

---

[37] *See Seibert v. Oklahoma ex rel. Univ. of Oklahoma Health Sciences Ctr.*, 867 F.2d 591 (10th Cir. 1989), *abrogated on other grounds by Fed. Lands Legal Consortium ex rel. Robart Estate v. United States*, 195 F.3d 1190, 1195 (10th Cir. 1999).

[38] *Id.* at 594.

[39] *Id.* citing *Quern v. Jordan*, 440 U.S. 332, 342 (1979); *Edelman v. Jordan*, 415 U.S. 651, 663 (1974); *Williams v. Bennett*, 689 F.2d 1370, 1376-77 (11th Cir. 1982) (state board of corrections immune from damage suits brought under sections 1983, 1985, and 1986).

[40] *Id.*

[41] *See Mireles v. Waco*, 502 U.S. 9, 11 (1991) (generally, a judge is immune from a suit for money damages).

[42] *See Ex parte Young*, 209 U.S. 123, 159-160, 28 S. Ct. 441 (1908) (citizens may not generally sue states in federal court under the Eleventh Amendment, but the Ex parte Young doctrine has carved out an alternative, permitting citizens to seek prospective equitable relief for violations of federal law committed by state officials in their official capacities); and *Pulliam v. Allen*, 466 U.S. 522 (1984).

Debtors' Complaint does not specifically request prospective injunctive relief. To the extent there is a request for prospective injunctive relief, it is only available, if at all, under Debtors' ongoing conspiracy claim. The facts in Debtors' Complaint, however, are insufficient to support a conspiracy claim. Nowhere do Debtors assert that they are members of a protected class nor are there any factual allegations specifying conspiratorial conduct (*i.e.*, agreement and concerted action) on the part of Defendants. These are key elements of a Civil Rights Act conspiracy claim.[43] In their absence, Debtors' Complaint is not "plausible on its face" and should therefore have been dismissed.

V. Conclusion

For the foregoing reasons, the bankruptcy court's Order Granting Defendants' Motion To Dismiss is AFFIRMED.

---

[43] See *Griffin v. Breckenridge*, 403 U.S. 88, 102-103 (1971) (Plaintiff must allege and prove four elements to make out a violation of § 1985: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States).