FILED
U.S. Bankruptcy Appellate Panel
of the Tenth Circuit
March 11, 2013
Blaine F. Bates
Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE COLLECTING SUPPLIES LLC, also known as Collecting Supplies Manufacturing Division, Debtor.	BAP No. WY-12-059
COLLECTING SUPPLIES LLC, Appellant, v. THE CITY OF MANKATO, Appellee.	Bankr. No. 11-21198 Chapter 11 OPINION*
IN RE COLLECTING SUPPLIES LLC, also known as Collecting Supplies Manufacturing Division, Debtor.	BAP No. WY-12-062
COLLECTING SUPPLIES LLC, Appellant, v. THE CITY OF MANKATO, Appellee.	Bankr. No. 11-21198 Chapter 11

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

* This unpublished opinion may be cited for its persuasive value, but is not precedential, except under the doctrines of law of the case, claim preclusion, and issue preclusion. 10th Cir. BAP L.R. 8018-6.

Before NUGENT, BROWN, and ROMERO, Bankruptcy Judges.

BROWN, Bankruptcy Judge.

The Debtor Collecting Supplies, LLC appeals three orders of the bankruptcy court entered in favor of the City of Mankato, Kansas (the "City"). The City is the Debtor's former landlord. Over several years, the City attempted to work out an arrangement to allow the Debtor to cure its outstanding lease obligations. Following the Debtor's bankruptcy filing, the City sought a determination that equipment, formerly owned by the Debtor, now belonged to the City and, therefore, the automatic stay did not prevent the City from disposing of it. The bankruptcy court granted this motion. The City also sought to compel the turnover of certain funds held in the trust account of the Debtor's attorney, which had been earmarked for payment to the City. The bankruptcy court granted this motion as well. The Debtor then sought to alter or amend the order determining the equipment belonged to the City, but the bankruptcy court denied that motion. This Court affirms all three orders.[1]

I. BACKGROUND

The Debtor manufactured boxes and owned specialized equipment for this purpose. The equipment was located in a building owned by the City and leased to the Debtor. When the Debtor fell behind on its lease payments in 2007, the City filed suit in state court. Before the conclusion of the case, they entered into an agreement to resolve the lease defaults. The Debtor agreed to the entry of a judgment in the City's favor, awarding the City both a monetary judgment in the amount of $5,200 and the possession of the building. The City agreed it would

[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 these appeal. Fed. R. Bankr. P. 8012. The cases are therefore ordered submitted without oral argument.

forebear executing on this judgment on the conditions that the Debtor would pay $5,200 by June 15, 2007, make timely payments of future rent, and vacate the building no later than December 1, 2007. If the Debtor failed to fulfill these obligations, then the agreement provided that the City would have the right to immediate possession of the building and the right to levy on the equipment to satisfy its judgment. A judgment incorporating the parties' agreement was entered in the state court action on June 5, 2007.

Apparently, the parties made some other agreement or arrangement by which the Debtor was allowed to remain on the premises beyond December 1, 2007, because the next event reflected in our record is that the City obtained a writ of execution on June 14, 2011, about four years later. The writ directed the sheriff to levy on the Debtor's equipment to satisfy the June 2007 judgment. The equipment was scheduled to be sold at a sheriff's sale on August 11, 2011. The day before the sale, the parties once again agreed to a cure arrangement. The Debtor agreed to make two cure payments and to remove the equipment no later than October 30, 2011. Their agreement provided that, if the Debtor did not timely remove the equipment, it would become "property of the City to dispose of as it wishes."[2] While the Debtor made the scheduled payments, it did not remove the equipment. Consequently, the City secured the building and the equipment on October 31, 2011. On the same day, the Debtor filed its Chapter 11 petition.

In December 2011, the City filed a motion for relief from the automatic stay to take possession of the equipment and remove it from the building. Alternatively, it requested a determination that the equipment belonged to the City and, therefore, was not subject to the automatic stay. The Debtor objected, claiming ownership of the equipment and that it was necessary for a successful

---

[2] Letter Agreement of August 10, 2011, *in* Appendix for Case No. 12-59 ("Appx59") at 18.

reorganization. Debtor further claimed that the City had not perfected an interest in the equipment, had prevented it from removing the equipment, and had failed to properly secure the premises, resulting in "a loss of assets and damage to the property."[3]

In April 2012, the parties yet again entered into a stipulation, this time to resolve the pending stay relief motion (the "Stipulation"). Pursuant to the Stipulation, the Debtor agreed to pay $4,000 on entry of the bankruptcy court's order approving the Stipulation, to remove the equipment from the building within 45 days, and to pay rent in the amount of $33 per day until its removal. Both the $4,000 and the rental payments were to be held by Debtor's attorney in a trust account, to be paid to the City at least five days prior to the equipment removal deadline or on the date on which the Debtor actually removed the equipment, whichever occurred first. The Stipulation further provided:

> 14. In the event any equipment remains in the building or on the real property of the City of Mankato at the expiration of the time stated herein then the Debtor concedes that such property is in fact the property of the City of Mankato to dispose of as it sees fit free from any claim by or through the Debtor on any ground. The City of Mankato may apply to this Court for an order of non-jurisdiction at that time, which shall be entered by the Court based on this stipulation without the need for any further notice or hearing.[4]

The bankruptcy court entered an order approving the Stipulation on April 24, 2012. This established a deadline for the 45-day removal requirement of June 8, 2012.

Predictably, the Debtor failed to remove the equipment as agreed. As a result, the City filed a motion (the "Jurisdiction Motion") on June 12, 2012, seeking a declaration from the bankruptcy court that the equipment was not

---

[3] No details were given to support this statement, but in a subsequent stipulation, the parties made reference to a fire that occurred on the City's property, which damaged some of the equipment and resulted in a loss of power to the building.

[4] Stipulation at 4, *in* Appx59 at 29.

subject to its jurisdiction because it belonged to the City and was, therefore, not property of the estate. The bankruptcy court entered its order granting the City's motion on June 18, 2012 (the "Jurisdiction Order").

Unfortunately, this order did not end the matter. On June 20, 2012, the City filed another motion, seeking an order to require the Debtor's attorney to turnover the $4,000 held in his trust account (the "Turnover Motion"). The Debtor objected to the Turnover Motion on the basis that it was inconsistent with the Jurisdiction Order that had declared the bankruptcy court lacked jurisdiction. In addition, on July 2, 2012, the Debtor filed a motion to alter or amend the Jurisdiction Order (the "Reconsideration Motion"), complaining that it had not been "served with a notice of opportunity to object nor was the motion set for a hearing."[5]

On July 12, 2012, the bankruptcy court held a hearing on both motions. It denied the Reconsideration Motion. Specifically, it held that the Debtor had agreed to the Stipulation's terms waiving further notice, the Jurisdiction Order did not end the court's jurisdiction over the trust funds nor its jurisdiction to enforce its own prior orders with respect to the equipment, and the Debtor had not established it was entitled to post-judgment relief (the "Reconsideration Order"). It also granted the City's Turnover Motion (the "Turnover Order"). Debtor's counsel was required to pay $4,000 to the City no later than July 19, 2012. The Debtor appealed both the Turnover Order[6] and the Reconsideration Order.[7]

---

[5] Motion to Alter or Amend at 1, ¶ 2, *in* Appendix for BAP Case No. 12-62 ("Appx62") at 30.

[6] Notice of Appeal in BAP Case No. 12-59, *in* Appx59 at 47.

[7] Notice of Appeal in BAP Case No. 12-62, *in* Appx62 at 39. Because both appeals involve the same parties and arise out of the same basic facts, we have combined our rulings on both appeals into a single opinion.

II. JURISDICTION AND STANDARDS OF REVIEW

This Court has jurisdiction to hear timely-filed appeals from "final judgments, orders, and decrees" of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district court hear the appeal.[8] None of the parties elected to have this appeal heard by the United States District Court for the District of Wyoming, and they have, therefore, consented to appellate review by this Court.

Both orders appealed to this Court are final orders. A decision is considered final "if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'"[9] Orders denying post-judgment motions that were timely filed from entry of a final order are final for purposes of appeal.[10] The Jurisdiction Order made a final ruling that the equipment was not subject to the bankruptcy court's jurisdiction.[11] Likewise, the Turnover Order was a final order enforcing the bankruptcy court's prior order approving the Stipulation. Since the Debtor timely filed his notices of appeal from both orders,[12] this Court has jurisdiction to hear both appeals.

The standard of review applicable to these appeals differs. A bankruptcy court's decision to deny a post-judgment motion is reviewed for abuse of

---

[8] 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002; 10th Cir. BAP L.R. 8001-3.

[9] *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

[10] *See, e.g., Diamond v. Bakay (In re Bakay)*, Case Nos. CO-11-003, 463 B.R. 142, 2011 WL 2694718 at *2 (10th Cir. BAP July 12, 2011), *aff'd*, 454 F. App'x 652 (10th Cir. 2011) (order denying post-judgment motion was final for purposes of appeal).

[11] *In re Thomas*, 469 B.R. 915, 919 n.7 (10th Cir. BAP 2012) (order determining creditor not subject to automatic stay is final).

[12] *See* Fed. R. Bankr. P. 8002(b) (timely post-judgment motion resets appeal time to run from entry of order disposing of the motion).

discretion.[13] Since the Debtor's post-judgment motion was filed within fourteen days of the entry of the Jurisdiction Order, it is treated as a motion under Fed. R. Civ. P. 59, made applicable by Fed. R. Bankr. P. 9023. An appeal under this rule "raises the bankruptcy court's underlying judgment for review" as well.[14] The Debtor's appeal raises no issues of fact and, therefore, the Court's review of the Jurisdiction Order involves only questions of law that the Court reviews *de novo.* In particular, a question of jurisdiction is a legal issue that is reviewed on appeal *de novo.*[15] Similarly, the appeal of the Turnover Order raises only questions of law reviewed *de novo*.[16] A bankruptcy court's interpretation of an unambiguous contract is a legal issue that is reviewed on appeal *de novo*.[17] Finally, we review the Reconsideration Order for abuse of discretion.[18]

III. DISCUSSION

A. The Jurisdiction and Reconsideration Orders

On appeal, the Debtor principally attacks the Jurisdiction Order on due process grounds. It asserts that the Debtor was denied an opportunity to respond to the City's motion. Had it been allowed this opportunity, it would have shown

---

[13] *In re McCaull*, 309 F. App'x 230, 233 (10th Cir. BAP 2009) (final orders denying motions to reconsider reviewed for abuse of discretion).

[14] *In re Jones,* Case Nos. WO-07-032, 381 B.R. 417, 2007 WL 3268431 at *3 (10th Cir. BAP Nov. 6, 2007). *See also Hawkins v. Evans,* 64 F.3d 543, 546 (10th Cir. 1995) (appeal from denial of a motion to reconsider construed as a Rule 59(e) motion permits consideration of the merits of the underlying judgment).

[15] *In re Courtesy Inns, Ltd., Inc.*, 40 F.3d 1084, 1085 (10th Cir. 1994) (jurisdiction is a question of law reviewed *de novo*).

[16] *Sender v. The Bronze Group, Ltd. (In re Hedged-Invs. Assocs., Inc.)*, 380 F.3d 1292, 1297-98 (10th Cir. 2004) (fundamental facts reviewed for clear error and legal tests reviewed *de novo*).

[17] *In re Rafter Seven Ranches LP*, Case. No. KS-06-137, 378 B.R. 418, 2007 WL 2694310 at *3 (10th Cir. BAP Sept. 12, 2007) (unambiguous contract interpretation reviewed *de novo*).

[18] *In re Dewey*, 237 B.R. 783, 787 (10th Cir. BAP 1999).

that the City had hindered its ability to remove the equipment and to otherwise fully comply with the Stipulation. The Court rejects these assertions for three reasons.

First, Debtor knowingly and willingly agreed to waive the right to both notice and a hearing in the Stipulation. "Waiver is the voluntary and intentional relinquishment of a known right."[19] The Stipulation expressly provided that the City may apply for an order in the event of default, "which shall be entered by the Court based on this stipulation without the need for any further notice or hearing."[20] In entering into this Stipulation, the Debtor was represented by counsel. The bankruptcy court reviewed and approved the Stipulation, and entered an order incorporating its terms. Thus, there is no basis for the Debtor's present assertion that it was entitled to notice and a hearing prior to entry of the Jurisdiction Order. If the Debtor had any issues with the equipment removal deadline, it should have brought those to the attention of the bankruptcy court before the deadline expired. Instead, the Debtor waited to file its Reconsideration Motion until July 2, 2012, fourteen days after entry of the Jurisdiction Order and almost three weeks after the City's motion was filed.

Second, nowhere in the record does it appear that the Debtor ever raised an issue in the bankruptcy court that the City had somehow undermined its ability to remove the equipment. This Court will not consider arguments raised for the first time on appeal.[21] There is only one indirect reference in the appellate record that even hints at a possible defense. In its request for relief in the post-judgment motion, the Debtor asked the bankruptcy court to vacate the Jurisdiction Order

---

[19] *Bettis v. Hall*, 852 F.Supp.2d 1325, 1340 (D. Kan. 2012) (applying Kansas law).

[20] Stipulation at 4, *in* Appx59 at 29.

[21] *In re Cozad*, 208 B.R. 495, 498 (10th Cir BAP 1997) (appellate courts should not consider issues not properly raised in trial court).

and "retain jurisdiction of all issues related to the disputes between the parties, *including any breaches by the City*[.]"[22] However, this vague reference to a possible breach was insufficient to preserve this issue for appeal.

Finally, the Debtor made no attempt to present grounds to alter or amend the Jurisdiction Order. Grounds for relief under Fed. R. Civ. P. 59, made applicable by Fed. R. Bankr. P. 9023, "include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice."[23] The Debtor's motion, which is only two pages long, essentially repeats its two grounds for appeal of the Jurisdiction Order and the Turnover Order. It makes no attempt to satisfy the rule's requirements for post-judgment relief. There is no claim of a change in the law or the discovery of new evidence.

Nor did the interests of justice support the bankruptcy court's reconsideration. This Debtor has had numerous opportunities to fulfill its obligations. At some point, there must come an end to the second chances. Certainly, there must come an end to the proliferation of litigation. Moreover, "[t]he inveterate policy of the law is to encourage, promote, and sustain the compromise and settlement of disputed claims."[24] If courts are unwilling to enforce settlements, then parties will be disinclined to settle.

Accordingly, we conclude that there were no errors that would provide a basis for overturning the Jurisdiction Order. Nor was the bankruptcy court's denial of the Debtor's Reconsideration Motion an abuse of discretion.

---

[22] Reconsideration Motion at 2, ¶ 5, *in* Appx62 at 31 (emphasis added).

[23] *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

[24] *Am. Home Assurance Co. v. Cessna Aircraft Co.*, 551 F.2d 804, 808 (10th Cir. 1977) (internal quotation marks omitted); *see also Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910) ("[c]ompromises of disputed claims are favored by the courts") (citing *Hennessy v. Bacon*, 137 U.S. 78 (1890)).

B. The Turnover Order

The Debtor argues that the bankruptcy court lacked jurisdiction to enter the Turnover Order. Having found that the equipment was not property of the estate in the Jurisdiction Order, the Debtor claims that this Order divested the bankruptcy court of jurisdiction over the funds held in the Debtor's attorney's trust account as well. This argument fails for two reasons.

First, the Jurisdiction Order made no finding in regard to the ownership of these funds. Its ruling that the court had no jurisdiction extended only to the equipment and possession of the leased premises. It did not encompass the funds.

Second, the City had the right to demand that the parties' prior stipulation about the funds be enforced by asking the bankruptcy court to order them turned over to it. This is not a "turnover" proceeding in the § 542(a) sense. Nor is it a claim for administrative rent or a motion for stay relief. The court's authority to order the Debtor to turnover the funds stems from its authority to enforce its own orders. In the Stipulation, which was incorporated into the court's April 24, 2012 Order, it expressly provided that the funds would be paid to the City by a date certain. The bankruptcy court had the authority to enforce this provision of its order.[25]

IV. CONCLUSION

For the reasons stated, the bankruptcy court's actions in granting the City's Jurisdiction Motion, denying the Debtor's Reconsideration Motion, and granting the City's Turnover Motion are hereby AFFIRMED.

---

[25] *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (bankruptcy courts have jurisdiction to enforce their own orders, even post-confirmation).

NUGENT and ROMERO, JJ, concurring.

We concur in this opinion, but write separately to recognize and thank our colleague Judge Elizabeth E. Brown as she leaves the service of the Bankruptcy Appellate Panel in May. We will all miss her congenial nature and her thoughtful and analytical work.