FILED
U.S. Bankruptcy Appellate Panel of the Tenth Circuit
March 19, 2013
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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE DONALD TROY STAKER and KERRY LEE STAKER,

Debtor.

BAP No. UT-12-091

DONALD TROY STAKER and KERRY LEE STAKER,

Plaintiffs – Appellants,

v.

GARY E. JUBBER, Chapter 7 Trustee, WELLS FARGO BANK, N.A., doing business as America's Servicing Company Loan Servicer for US Bank National Association, Trustee for Citigroup Mortgage Loan Trust, Inc., Mortgage Pass-Through Certificates, Series 2005-8, and UNITED STATES TRUSTEE,

Appellees,

and

US BANK NATIONAL ASSOCIATION, AMERICAN HOME MORTGAGE ACCEPTANCE, INC., and EAGLE POINTE TITLE,

Defendants.

Bankr. No. 11-35404
Adv. No. 12-02031
Chapter 7

IN RE DONALD TROY STAKER and KERRY LEE STAKER,

Debtors.

BAP No. UT-12-092

DONALD TROY STAKER and
KERRY LEE STAKER,

Plaintiffs – Appellants,

v.

WELLS FARGO BANK, N.A., doing business as America's Servicing Company on behalf of Deutsche Bank National Trust Company, Trustee for HSI Asset Loan Oblig. Trust 2006-2, Certs. 2006-2, and GMAC MORTGAGE, LLC,

Defendants – Appellees,

and

GARY E. JUBBER, Chapter 7 Trustee and UNITED STATES TRUSTEE,

Appellees,

and

BACKMAN TITLE SERVICES, LTD., OLD REPUBLIC TITLE COMPANY OF UTAH, and AMERICAN BROKER CONDUIT,

Defendants.

Bankr. No. 11-35404
Adv. No. 12-02032
Chapter 7

OPINION*

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

Before CORNISH, MICHAEL, and JACOBVITZ, Bankruptcy Judges.[1]

MICHAEL, Bankruptcy Judge.

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* This unpublished opinion may be cited for its persuasive value, but is not precedential, except under the doctrines of law of the case, claim preclusion, and issue preclusion. 10th Cir. BAP L.R. 8018-6.

[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 this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

The Chapter 7 debtors appeal the bankruptcy court's orders remanding two adversary proceedings to state court for dismissal. The adversaries were prepetition quiet title actions removed from state court and then settled by the trustee. We dismiss the appeals because (1) they are moot, and (2) the debtors do not have the requisite standing to appeal the bankruptcy court's orders.

I. BACKGROUND[2]

In 2005 and 2006, Donald Troy Staker and Kerry Lee Staker (the "Stakers") engaged in real estate transactions with respect to two different pieces of property on the same street near Salt Lake City, Utah. Several years later, but prior to filing for bankruptcy protection, the Stakers brought two quiet title actions in Utah state court relating to the transactions that resulted in the entry of default judgments. The real estate transactions and related lawsuits giving rise to the Stakers' appeals are described separately below.

A. Property at 4259 Stane Avenue (BAP Appeal UT-12-91)

In 2005, the Stakers borrowed money from American Home Mortgage Acceptance, Inc. ("AMHA"), executing a promissory note in the amount of approximately $90,000. The note was secured with a deed of trust on rental real property the Stakers owned, which was located at 4259 Stane Avenue in West Valley City, Utah. In July 2011, prior to filing their Chapter 7 petition, the Stakers filed a quiet title action regarding the property against AMHA, Eagle Point Title, and U.S. Bank in Utah state court (the "AMHA Action").

After AMHA and Eagle Point Title failed to appear, the state court entered a default judgment and order to quiet title in favor of the Stakers in October 2011, declaring the deed of trust to be a nullity and of no further force or effect. Although U.S. Bank had filed a motion to dismiss the action, it was not served

[2] The underlying facts of these cases are not disputed on appeal, and therefore what follows is taken from the bankruptcy court's *Findings and Conclusions Regarding Stipulated Motion to Remand*, *in* Appellants' App. 12-91 at 183, and Appellants' App. 12-92 at 182.

with the Stakers' motion for entry of default judgment or other default judgment documents. U.S. Bank filed a motion to vacate the default judgment on or about October 25, 2011.

B. Property at 4271 Stane Avenue (BAP Appeal UT-12-92)

In 2006, Mr. Staker borrowed money from American Brokers Conduit ("ABC"), executing a promissory note in the amount of approximately $115,000. The note was secured with a deed of trust on the Stakers' home, which was located at 4271 Stane Avenue in West Valley City, Utah. In December 2006, Wells Fargo, N.A. d/b/a America's Servicing Company ("ASC") acquired the rights to service the loan. In January 2011, prior to filing bankruptcy, the Stakers filed a quiet title action regarding the property against Backman Title Services Ltd., Old Republic Title Company of Utah, ABC, and GMAC Mortgage, LLC in Utah state court (the "ABC Action").

After ABC and Backman Title Services failed to appear, the state court entered a default judgment and order to quiet title in favor of the Stakers in April 2011, declaring the deed of trust to be a nullity and of no further force or effect. ASC as the loan servicer, and Deutsche Bank as beneficiary of the deed of trust, first became aware of the ABC Action in July 2011 and moved to intervene.

II. BANKRUPTCY PROCEEDINGS

The Stakers filed their Chapter 7 petition on October 24, 2011. They scheduled the real properties described above on Schedule A,[3] and listed any debt to AMHA and ABC as unliquidated and disputed unsecured nonpriority claims on Schedule F.[4] However, the Stakers disclosed the AMHA and ABC Actions on

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[3] *Schedule A Real Property*, *in* Appellants' App. 12-91 at 221.

[4] *Schedule F Creditors Holding Unsecured Nonpriority Claims*, *in* Appellants' App. 12-91 at 237.

their Statement of Financial Affairs.[5]

Gary E. Jubber was appointed as trustee of the Stakers' Chapter 7 bankruptcy estate ("Trustee"). In January 2012, Trustee removed the AMHA and ABC Actions from Utah state court to the bankruptcy court as adversary proceedings. In April 2012, Trustee entered into a settlement agreement respecting the adversary proceedings with defendants ASC, Deutsche Bank, and U.S. Bank (collectively the "Banks").[6]

Under the settlement agreement: 1) the Banks agreed to pay Trustee $4,000; 2) Trustee agreed to release any claims the bankruptcy estate had against the Banks; 3) the Banks agreed to release any claims they had against the bankruptcy estate, "excepting the secured claims against the Properties and any unsecured claims against the [ ] bankruptcy estate for any deficiencies that may remain after foreclosure;" and 4) the parties agreed that the default judgments would be vacated and the adversary proceedings dismissed.[7] Trustee filed a motion for bankruptcy court approval of the settlement agreement, and a hearing on the motion was held. On May 24, 2012, the bankruptcy court entered an order approving the agreement over the Stakers' objection.[8] The Stakers did not appeal the bankruptcy court's order approving the settlement agreement.[9]

Subsequently, Trustee and the Banks filed joint stipulated motions to

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[5] *Statement of [Financial] Affairs* at 3-5, *in* Appellants' App. 12-91 at 211-13.

[6] *Settlement Agreement* attached as Exhibit A to *Amended Motion to Approve Settlement Agreement*, *in* Appellants' App. 12-91 at 255.

[7] *Id.* at 3, *in* Appellants' App. 12-91 at 257.

[8] *Findings and Conclusions Regarding Stipulated Motion to Remand* at 4, *in* Appellants' App. 12-91 at 186, Appellant's App. 12-92 at 185.

[9] *Id.*

remand the adversary proceedings to the Utah state court.[10] Upon review, the bankruptcy court concluded it should abstain and remand the removed proceedings pursuant to 28 U.S.C. § 1452. Therefore, on October 18, 2012, it entered orders in both of the adversary proceedings remanding the AMHA and ABC Actions to the Utah state court, and further stating "pursuant to the settlement agreement approved by this Court, the State Court may vacate the Default Judgment . . . and dismiss the complaint in that action."[11] The Stakers timely appealed the bankruptcy court's two remand orders on November 1, 2012, but did not file any motion for stay of those orders pending appeal.

Upon remand, Trustee and the Banks filed a "joint and stipulated motion to vacate default judgment and dismiss case with prejudice" in the Utah state court in both the AMHA and ABC Actions. On November 6, 2012, the Utah state court granted the motion in the AMHA Action, vacating the default judgment and dismissing the case with prejudice.[12] On December 27, 2012, the Utah state court did the same in the ABC Action.[13]

III. APPELLATE JURISDICTION

This Court has jurisdiction to hear timely filed appeals from final orders, final collateral orders, and, with leave of court, interlocutory orders of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district

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[10] *Joint and Stipulated Motion to Remand*, *in* Appellants' App. 12-91 at 104, Appellant's App. 12-92 at 144.

[11] *Order Remanding Adversary Proceeding to Third Judicial District Court, State of Utah* at 2, *in* Appellant's App. 12-91 at 193, and Appellant's App. 12-92 at 191.

[12] *Order Granting Joint and Stipulated Motion to Vacate Default Judgment and Dismiss Case, with Prejudice, in* Appellees' Supp. App. 12-91 at 61.

[13] *Order Granting Motion to Vacate Default Judgment and Dismiss Case with Prejudice, in* Appellees' Supp. App. 12-92 at 67.

court hear the appeal.[14] Neither party elected to have these appeals heard by the United States District Court for the District of Utah. The parties have therefore consented to appellate review by this Court.

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.'"[15] Although the remand orders in these two cases do not completely end the litigation, they are nevertheless appealable because they are collateral orders that effectively put the litigants out of bankruptcy court, and surrender jurisdiction of federal suits to a state court.[16]

In addition to determining whether the appealed orders are "final" as required under 28 U.S.C. § 158(a)(1), this Court must examine the jurisdictional issues of whether: 1) the appeals are moot, including whether they are moot in the constitutional sense, i.e., that there is no case or controversy;[17] and 2) the parties pursuing the appeals before this Court have standing to do so. As discussed below, we conclude both that the appeals are moot and that the Stakers lack standing in these matters. Accordingly, the appeals must be dismissed.

A. Subsequent events have made these appeals moot

"'[A] case is moot when the issues presented are no longer 'live' or the

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[14] 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002; 10th Cir. BAP L.R. 8001-3.

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

[16] *Id.* at 714.

[17] *See* U.S. Const. art. III, § 2, cl. 1; *Yellow Cab Coop. Ass'n v. Metro Taxi, Inc.* (*In re Yellow Cab Coop. Ass'n*), 132 F.3d 591, 594-95 (10th Cir. 1997); *In re L.F. Jennings Oil Co.* 4 F.3d 887, 889 (10th Cir. 1993); *see also Arizonans for Official English v. Ariz.*, 520 U.S. 43, 73 (1997) (court has an obligation to satisfy itself that it has jurisdiction to hear an appeal).

parties lack a legally cognizable interest in the outcome.'"[18] A controversy is no longer "live" when the reviewing court is incapable of rendering effective relief or restoring the parties to their original position.[19] "[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party, the appeal must be dismissed."[20]

In this case, the bankruptcy court entered orders remanding the adversary proceedings to the Utah state court and advising that it could vacate the default judgments and dismiss the quiet title actions. The Stakers timely appealed the bankruptcy court's remand orders, but did not seek any stay of those orders pending appeal pursuant to Federal Rule of Bankruptcy Procedure 8005. In absence of a stay, events have now taken place that make it impossible for this Court to grant the Stakers any relief on appeal.

Shortly after remand of the actions by the bankruptcy court, Trustee and the Banks filed a joint motion to vacate default judgment and dismiss in both the AMHA and ABC Actions. The Utah state court then vacated the default judgments and dismissed both actions with prejudice. Because the actions no longer exist and cannot be revived, this Court cannot grant any effectual relief to the Stakers by reversing the bankruptcy court's remand orders, even if the merits of the case so warranted. Accordingly, these appeals must be dismissed as moot.

B. The Stakers lack standing to appeal the remand orders

We are required to address the issue of standing even if the court below did

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[18] *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)).

[19] *Mills v. Green*, 159 U.S. 651, 653 (1895); *see Church of Scientology v. United States*, 506 U.S. 9, 12 (1992); *In re Osborn*, 24 F.3d 1199, 1203 (10th Cir. 1994); *In re King Res. Co.*, 651 F.2d 1326, 1331-32 (10th Cir. 1980) (if the only effect of reversal on appeal would be to order the impossible, court should not address the merits of the appeal).

[20] *Osborn*, 24 F.3d at 1203 (citing *Church of Scientology*, 506 U.S. at 12 (quoting *Mills*, 159 U.S. at 653)).

not pass on it, and even if no party has raised the issue.[21] "The federal courts are under an independent obligation to examine their own jurisdiction, and standing 'is perhaps the most important of [the jurisdictional] doctrines.'"[22] "Standing may be raised at any time in the judicial process,"[23] and cannot be waived.[24] Parties seeking the exercise of jurisdiction in their favor must "clearly [ ] allege facts demonstrating that [they are] proper part[ies] to invoke judicial resolution of the dispute[.]"[25] This the Stakers have not done and, moreover, cannot do.

Pursuant to 11 U.S.C. § 541(a)(1),[26] a bankruptcy estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." This includes legal claims or causes of action,[27] as well as judgments,[28] held by the debtor. As a result, when the Stakers filed for Chapter 7 relief, their estate became the owner of all of their property, including claims or interests that accrued as a result of the default judgments entered in their favor by the Utah state court in the quiet title actions. Because the causes of action or judgments

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[21] *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 230-31 (1990), *modified by City of Littleton v. Z.J. Gifts D-4, LLC*, 541 U.S. 774, 781 (2004).

[22] *Id.* at 231 (quoting *Allen v. Wright,* 468 U.S. 737, 750 (1984)).

[23] *Bd. of County Comm'rs v. W.H.I., Inc.,* 992 F.2d 1061, 1063 (10th Cir. 1993).

[24] *See U.S. v. Hays,* 515 U.S. 737, 742 (1995).

[25] *Warth v. Seldin*, 422 U.S. 490, 518 (1975).

[26] Unless otherwise indicated, all future statutory references in text are to the Bankruptcy Code, Title 11 of the United States Code.

[27] *See Auday v. Wet Seal Retail, Inc.*, 698 F.3d 902, 904 (6th Cir. 2012); *In re Wischan*, 77 F.3d 875, 877 (5th Cir. 1996); *Sender v. Buchanan (In re Hedged-Invs. Assocs., Inc.)*, 84 F.3d 1281, 1285 (10th Cir. 1996); *Ehrenhaus v. Reynolds*, 965 F.2d 916, 920 (10th Cir. 1992).

[28] *Reed v. City of Arlington*, 650 F.3d 571, 575 (5th Cir. 2011) (citing 5 *Collier on Bankruptcy* ¶ 541.07[4], at 41 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011) ("Where a cause of action belonging to the debtor has been merged into judgment prior to bankruptcy, the estate succeeds to all rights under such judgment.")).

are part of the Chapter 7 bankruptcy estate, absent abandonment, Trustee is the real party in interest with exclusive standing to assert, enforce, or settle them.[29]

In their briefs, the Stakers argue that the "claims" at issue in these appeals do not belong to their bankruptcy estate because they do not meet the definition of claim in § 101(5), but instead are "creditors' claims."[30] Their argument simply makes no sense. It is true that whatever interests the Stakers held as a result of the default judgments in the quiet title actions originated with claims of creditors against real property they owned. Nevertheless, § 541(a)(1) includes in a bankruptcy estate "***all legal or equitable interests*** of the debtor in property as of the commencement of the case," not merely interests of the debtor that fall within the definition of claim in § 101(5). And once part of the Chapter 7 bankruptcy estate, such interests, including all of the Stakers' rights under the default judgments, belong to Trustee as representative of the bankruptcy estate.

IV. CONCLUSION

The Stakers' appeals of the bankruptcy court's orders remanding the quiet title actions to state court are moot because the actions have already been dismissed with prejudice. Further, as Chapter 7 debtors, the Stakers' have no standing to pursue these appeals. Accordingly, both appeals are hereby dismissed.

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[29] *See* 11 U.S.C. § 323(b); *Mauerhan v. Wagner Corp.*, 649 F.3d 1180, 1184 n.3 (10th Cir. 2011); *Wieburg v. GTE Sw., Inc.*, 272 F.3d 302, 306 (5th Cir. 2001).

[30] Appellants' 12-91 Opening Brief at 16-19, and 12-92 Opening Brief at 17-20.