

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Apps v. Morrison (In re Superior Homes & Investments, LLC)

521 F. App'x 895 (11th Cir. 2013) · Decided June 10, 2013

SUMMARY

The Eleventh Circuit affirmed approval of a bankruptcy settlement under Federal Rule of Bankruptcy Procedure 9019 and a related bar order enjoining creditors’ state-court claims against non-debtor defendants. The court held that the bankruptcy court had related-to jurisdiction and did not abuse its discretion in approving the compromise, which provided \$800,000 to the bankruptcy estate in exchange for barring further litigation.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Kravitch; Marcus; Wilson
JURISDICTION	Federal
DECIDED	June 10, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Creditor-appellants appealed the district court's affirmance of a bankruptcy court order approving a Rule 9019 settlement and entering a bar order enjoining related state-court litigation against the debtor and nondebtor defendants.
STANDARD OF REVIEW	The Eleventh Circuit reviewed the bankruptcy court's legal conclusions de novo, factual findings for clear error, and approval of the settlement agreement for abuse of discretion.
PRECEDENTIAL VALUE	Unpublished, nonprecedential Eleventh Circuit appellate decision
PARTIES	Apps and 115 other creditor-appellants v. Robert Morrison, Chapter 11 and Chapter 7 Trustee, Non-Debtor Defendants

TOPICS

- bankruptcy
- chapter 7
- fraudulent transfer
- adversary proceedings
- injunctions

PRACTICE AREAS

- Bankruptcy
- Civil procedure
- Appellate procedure
- Remedies
- Insurance

QUESTIONS PRESENTED

1. Whether the bankruptcy court had subject matter jurisdiction over state-court litigation between creditors and nondebtor defendants when that litigation could affect the bankruptcy estate.
2. Whether the bankruptcy court had authority under 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9019 to approve a settlement conditioned on a bar order enjoining related litigation against nondebtor defendants.
3. Whether the bankruptcy court abused its discretion under the *In re Justice Oaks II* factors by approving the compromise despite creditor objections concerning the recovery amount and the absence of Coblenz agreements.

HOLDINGS

1. The bankruptcy court had subject matter jurisdiction over the creditors' state-court litigation against the nondebtor defendants because the litigation could conceivably affect the administration of the bankruptcy estate and had a sufficient nexus to the Title 11 case.
2. The trustee had authority to seek the compromise and bar order, and the bankruptcy court had power to enter the bar order as an equitable order necessary to protect the estate and effectuate the bankruptcy process.
3. The bankruptcy court did not abuse its discretion by approving the compromise and entering the bar order despite the creditor-appellants' objections regarding the amount of their expected recovery and the absence of Coblenz agreements.

KEY QUOTATIONS

“In the bankruptcy context, we have interpreted “related to” jurisdiction as extending to those proceedings that “could conceivably have an effect on the estate being administered in bankruptcy.”” (521 F. App'x at 898)

“Allowing the state-court litigation to continue would have drained the Non-Debtor Defendants’ resources and allowed Appellants to make an end-run around the normal bankruptcy procedure for distribution of the Estate.” (521 F. App'x at 899)

FACTUAL BACKGROUND

Creditors asserted more than 650 claims against Superior Homes, including approximately \$33 million in unrepaid deposits. After the case was converted from Chapter 11 to Chapter 7, the trustee discovered potentially avoidable transfers to principals and affiliated nondebtor entities and sued to recover them. Because the nondebtor defendants had approximately \$1 million in assets that could be depleted defending state-court suits brought by estate creditors, the trustee negotiated an \$800,000 settlement conditioned on a bar order preventing further litigation against the debtor and nondebtor defendants.

PROCEDURAL HISTORY

Numerous creditors filed an involuntary Chapter 11 petition against Superior Homes & Investments, LLC; the case was later converted to Chapter 7 and Robert Morrison was appointed trustee. The trustee sued the debtor and affiliated nondebtor defendants to recover allegedly fraudulent transfers and negotiated an \$800,000 settlement conditioned on a bar order prohibiting further litigation. The bankruptcy court approved the compromise and entered the bar order on September 1, 2011; the district court affirmed on September 20, 2012; and the Eleventh Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Mosley, 494 F.3d 1320, 1324 (11th Cir. 2007)
- In re Cox, 338 F.3d 1238, 1241 (11th Cir. 2003) (per curiam)
- Christo v. Padgett, 223 F.3d 1324, 1335 (11th Cir. 2000)
- Munford v. Munford, Inc. (In re Munford, Inc.), 97 F.3d 449, 453-54 (11th Cir. 1996)
- Celotex Corp. v. Edwards, 514 U.S. 300, 307 n.5 (1995)
- Continental Illinois National Bank & Trust Co. of Chicago v. Chicago, Rock Island & Pacific Railway Co., 294 U.S. 648, 675 (1935)
- Alderwoods Group, Inc. v. Garcia, 682 F.3d 958, 967 n.19 (11th Cir. 2012)
- In re Justice Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir. 1990)
- Coblentz v. American Surety Co. of New York, 416 F.2d 1059, 1063 (5th Cir. 1969)
- Wrangen v. Pennsylvania Lumbermans Mutual Insurance Co., 593 F. Supp. 2d 1273, 1278 (S.D. Fla. 2008)

OPINION

PER CURIAM.

PER CURIAM: This appeal arises from the bankruptcy court's approval of a settlement agreement (the Compromise), entered on September 1, 2011, pursuant to Federal Rule of Bankruptcy Procedure 9019. The Compromise contained a Bar Order that prevented three cases from proceeding in Florida's state courts.

On this appeal, we address whether the bankruptcy court abused its discretion in barring those claims. For *897the reasons that follow, we conclude that it did not. I. On February 20, 2009, numerous creditors filed a Chapter 11 involuntary bankruptcy petition against Superior Homes & Investments, LLC (the Debtor). There were over 650 claims asserted against the Debtor, 400 of which concerned unre-turned deposits paid to the Debtor totaling \$33,000,000.

Robert Morrison was appointed as Chapter 11 Trustee (Trustee) of the estate (Estate). In November 2009, the bankruptcy court converted the case to Chapter 7. During his investigation of the Debtor's books and records, the Trustee discovered that the Debtor had made a number of

transfers to its principals and affiliated entities (collectively, the “Non-Debtor Defendants”), which were potentially subject to avoidance under the Bankruptcy Code and Florida law.

The Trustee also determined that these transfers rendered indistinguishable the assets of the Debtor and Non-Debtor Defendants. As a result, on February 18, 2011, the Trustee filed a complaint (the Adversary Proceeding) against the Debtor and the Non-Debtor Defendants to recover the allegedly fraudulent transfers made between the Debtor and the Non-Debtor Defendants during the time leading up to the bankruptcy case.

Based on the Non-Debtor Defendants’ cooperation during the Adversary Proceeding, the Trustee determined that they had approximately \$1,000,000 in cash and assets available to satisfy a judgment entered against them.

However, the Trustee was concerned that the \$1,000,000 in assets would be exhausted by the Non-Debtor Defendants’ defense of state-court cases filed by 560 creditors of the Estate. These creditors sought to recover from the Non-Debtor Defendants the allegedly fraudulent transfers made between the Debtor and the Non-Debtor Defendants.

In order to safeguard the \$1,000,000 for the benefit of the Estate and all of its creditors, the Trustee constructed a compromise that would result in the Non-Debtor Defendants paying \$800,000 to the Estate in exchange for the entry of an order barring further litigation against the Debtor and the Non-Debtor Defendants (the Bar Order). This would enjoin the creditors’ state-court litigation against the Non-Debtor Defendants.

Of those creditors, 116 (the Appellants) objected to the Bar Order, requesting that the bankruptcy court allow a judgment to issue against the Non-Debtor Defendants in the state-court proceedings so that Appellants could use the judgment to collect from other sources of recovery, such as insurance. Such an agreement is typically called a Coblenz agreement.¹ On September 1, 2011, the bankruptcy court denied Appellants’ request and entered the Bar Order.

On September 20, 2012, the district court affirmed the bankruptcy court’s approval of the Compromise and entry of the Bar Order. This appeal followed. II. When a district court affirms a bankruptcy court’s order, this court reviews the bankruptcy court’s decision on appeal.

In **898re Mosley*, 494 F.3d 1320, 1324 (11th Cir.2007). We review the bankruptcy court’s legal conclusions de novo and its factual findings for clear error. See *In re Cox*, 338 F.3d 1238, 1241 (11th Cir.2003) (per curiam).

We review a bankruptcy court’s approval of a settlement agreement for abuse of discretion. *Christo v. Padgett*, 223 F.3d 1324, 1335 (11th Cir.2000). Appellants first contend that the bankruptcy court did not have subject matter jurisdiction over Appellants’ state-court litigation against the Non-Debtor Defendants.

We disagree. Congress intended bankruptcy jurisdiction to extend to “all civil proceedings” that are “related to” bankruptcy cases. 28 U.S.C. § 1334(b). In the bankruptcy context, we have interpreted “related to” jurisdiction as extending to those proceedings that “could conceivably have an effect on the estate being administered in bankruptcy.” *Munford v. Munford, Inc.* (In re *Munford, Inc.*), 97 F.3d 449, 453 (11th Cir.1996) (internal quotation marks omitted).

This extends to “suits between third parties which have an effect on the bankruptcy estate.” *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 n. 5, 115 S.Ct. 1493, 1498 n. 5, 131 L.Ed.2d 403 (1995) (citing *Collier on Bankruptcy* ¶ 3.01[1] [c] [iv], p. 3-28 (15th ed. 1994)). Put another way, there must be “some nexus between the civil proceeding and the title 11 case.” *Munford*, 97 F.3d at 453.

We agree with the bankruptcy court and the district court that the state-court litigation enjoined by the Bar Order had a direct impact on the Estate. In *Munford*, we determined that bankruptcy jurisdiction properly extended to a dispute between third parties in an adversary proceeding and empowered the bankruptcy court to bar litigation between the parties pursuant to a Rule 9019 compromise.

Id. at 453-54. *Munford*, the debtor, had filed for bankruptcy after a failed leveraged buyout. *Id.* at 452. *Munford* then initiated an adversary proceeding seeking avoidance of certain transfers with numerous parties, including Valuation Research Company (VRC). *Id.* VRC offered \$350,000 to settle the claims on the condition that the bankruptcy court enjoin the non-settling defendants from seeking contribution or indemnification against VRC or its insurer.

Id. We held that the potential third-party lawsuits against VRC could conceivably affect the handling and administration of the bankruptcy estate. *Id.* at 454. Similarly, the state-court litigation at issue here would directly impact the Estate because the Trustee would not have received the \$800,000 settlement in the absence of the Bar Order.

Therefore, we find no merit in Appellants’ argument that the Trustee had no standing to assert a claim, because the Trustee did precisely what he had the authority to do: he requested entry of the Compromise and the Bar Order, which was well within the bankruptcy court’s power as a court sitting in equity. See 11 U.S.C. § 105; see also *Cont’l III Nat’l Bank & Trust Co. of Chicago v. Chicago, R.I. & P. Ry.*

Co., 294 U.S. 648, 675, 55 S.Ct. 595, 605-06, 79 L.Ed. 1110 (1935) (noting that a bankruptcy court has “[t]he power to issue an injunction when necessary to prevent the defeat” of its jurisdiction); *Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 967 n. 19 (11th Cir.2012) (noting that a bankruptcy court may issue “any type of order, whether injunctive, compensative or punitive, as long as it is necessary or appropriate to carry out the provisions of the Bankruptcy Code” (internal quotation marks omitted)).

Appellants next attack the propriety of the Compromise based on the factors from *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir.1990). In *Justice Oaks*, we identified the four factors a bankruptcy court must look to in evaluating a compromise: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

898 F.2d at 1549. Appellants' brief focuses solely on the fourth factor: the "paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Justice Oaks*, 898 F.2d at 1549. Appellants argue that the bankruptcy court abused its discretion in applying this factor because the Compromise will provide Appellants with a 2¢ return for each dollar of their deposit; and also because the Compromise does not contain Coblenz agreements, which would allow Appellants to pursue the Non-Debtor Defendants' insurers.

Again, we disagree. Although Appellants might receive only 2¢ on the dollar, this out-of-context observation ignores the fact that the Debtor is practically insolvent and the Non-Debtor Defendants — pursuant to the Compromise — are parting ways with approximately 80% of their remaining assets. Certainly, a Coblenz agreement would have been more beneficial to Appellants than the Compromise as it stands now, but we hardly think that the bankruptcy court abused its discretion in approving the Compromise and the Bar Order.

Allowing the state-court litigation to continue would have drained the Non-Debtor Defendants' resources and allowed Appellants to make an end-run around the normal bankruptcy procedure for distribution of the Estate.

Therefore, the Trustee did what was, in his business judgment, in the best interest of the Estate by structuring the Compromise and its Bar Order, and the bankruptcy court did not abuse its discretion in approving them. **AFFIRMED.** See *Coblenz v. Am. Sur. Co. of N.Y.*, 416 F.2d 1059, 1063 (5th Cir.1969). A Coblenz agreement, generally speaking, is a settlement agreement where "an insurer who ha[s] refused to handle its insured's defense, thus leaving its insured to his own resources, was bound by the terms of a negotiated final consent judgment entered against the insured."

Wrangen v. Penn. Lumbermans Mut. Ins. Co., 593 F.Supp.2d 1273, 1278 (S.D.Fla.2008) (internal quotation marks omitted).