

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF
MASSACHUSETTS

In re Fustolo

503 B.R. 206 (Bankr. D. Mass. 2013) · Decided December 16, 2013

SUMMARY

The Bankruptcy Court considers cross-motions for summary judgment concerning an involuntary Chapter 7 petition filed against Steven C. Fustolo by three judgment creditors. The principal issue is whether an unstayed state-court judgment on appeal is subject to a bona fide dispute under 11 U.S.C. § 303(b)(1). The court also addresses the petitioning creditors' claims, collateral securing certain debts, and whether the statutory requirements for an involuntary case are satisfied.

CASE DETAILS

COURT	United States Bankruptcy Court for the District of Massachusetts
WRITING FOR THE COURT	Joan N. Feeney
JURISDICTION	Massachusetts
DECIDED	December 16, 2013
DISPOSITION	other
PROCEDURAL POSTURE	Cross-motions for summary judgment concerning the alleged debtor's answer seeking dismissal of an involuntary Chapter 7 petition.
STANDARD OF REVIEW	Summary judgment is appropriate when no genuine dispute of material fact exists and the movant is entitled to judgment as a matter of law. Interpretation of the Bankruptcy Code is reviewed de novo in the cited appellate authority; the bankruptcy court applied the statutory requirements directly.
PRECEDENTIAL VALUE	Published bankruptcy court memorandum opinion
PARTIES	Steven C. Fustolo v. 50 Thomas Patton Drive, LLC, The Patriot Group, LLC, Richard Mayer

TOPICS

bankruptcy

chapter 7

summary judgment

statutory interpretation

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an unstayed state-court judgment on appeal is categorically not subject to a bona fide dispute under 11 U.S.C. § 303(b)(1), or whether the alleged debtor may rebut a presumption of no bona fide dispute.
2. Whether Patton Drive qualified as a petitioning creditor when part of its judgment was subject to a bona fide dispute as to amount.
3. Whether the petitioning creditors' claims exceeded the value of liens securing those claims by the statutory threshold under 11 U.S.C. § 303(b)(1).
4. Whether summary judgment was appropriate because no material facts were genuinely disputed.

HOLDINGS

1. The court adopted the Byrd burden-shifting approach: an unstayed state-court judgment generally establishes a prima facie showing that the claim is not subject to a bona fide dispute, but the alleged debtor may rebut that presumption by presenting objective evidence of a bona fide dispute as to liability or amount.
2. A bona fide dispute concerning a discrete portion of Patton Drive's judgment did not disqualify Patton Drive in its entirety. The undisputed portions of its claim could be counted for purposes of § 303(b)(1), and Patton Drive qualified as a petitioning creditor.
3. The petitioning creditors satisfied the statutory claim-value requirement because Patriot held an approximately \$20 million unsecured claim, which alone exceeded the statutory excess threshold after accounting for liens.
4. Summary judgment was appropriate because the factual disputes identified by the parties were not material to whether an order for relief should enter.

KEY QUOTATIONS

“Generally, an unstayed judgment should not be deemed to be the subject of a “bona fide dispute” as to liability or amount, even if it is on appeal. However, the existence of an unstayed judgment, in this court’s view, should not preclude the inquiry into whether a bona fide dispute exists as to the amount or validity of a claim.” (220-221)

“For a bona fide dispute to be relevant, it must at least have the potential to reduce the total of petitioners’ claims to an amount below the statutory threshold.” (223)

FACTUAL BACKGROUND

Three judgment creditors filed an involuntary petition against Fustolo seeking a Chapter 7 order for relief. Patriot held an undisputed, unsecured judgment of approximately \$20.4 million, and Mayer held an undisputed judgment of \$150,000. Patton Drive held a state-court judgment against Fustolo arising from notes and a

guaranty, but approximately \$4 million of that judgment was attributable to a guaranty of RBH notes that Fustolo had not executed; Patton Drive's counsel conceded the error. The remaining portions of Patton Drive's judgment, including amounts based on Fustolo's guaranty of the TPD notes, were not subject to a bona fide dispute sufficient to defeat the petition.

PROCEDURAL HISTORY

Three creditors filed an involuntary Chapter 7 petition against Steven C. Fustolo. Fustolo answered and disputed part of one petitioning creditor's judgment, arguing that the petition failed to satisfy 11 U.S.C. § 303(b), including the requirement that petitioning creditors hold claims not subject to a bona fide dispute. The bankruptcy court determined that no material facts were genuinely disputed, applied the burden-shifting approach of *In re Byrd*, concluded that part of the Patton Drive judgment was subject to a bona fide dispute but that a substantial undisputed portion remained, and ordered relief under Chapter 7.

DISPOSITION

other

CASES CITED

- *In re Drexler*, 56 B.R. 960, 967 (Bankr. S.D.N.Y. 1986)
- *Platinum Fin. Servs. Corp. v. Byrd* (*In re Byrd*), 357 F.3d 433, 437-40 (4th Cir. 2004)
- *Marciano v. Chapnick* (*In re Marciano*), 708 F.3d 1123, 1124-28 (9th Cir. 2013)
- *In re Dilley*, 339 B.R. 1, 6 (1st Cir. BAP 2006)
- *In re Henry S. Miller Commercial, LLC*, 418 B.R. 912, 920-22 (Bankr. N.D. Tex. 2009)
- *In re Kelley*, 498 B.R. 392, 397 (1st Cir. BAP 2013)
- *In re Varrasso*, 37 F.3d 760, 762-63 (1st Cir. 1994)
- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)
- *In re Focus Media, Inc.*, 378 F.3d 916, 926 (9th Cir. 2004)
- *In re DemirCo Holdings, Inc.*, No. 06-70122, 2006 WL 1663237, at *3 (Bankr. C.D. Ill. June 9, 2006)
- *In re Miller*, 489 B.R. 74, 81-83 (Bankr. E.D. Tenn. 2013)
- *In re Byrd*, 357 F.3d 433, 440 n. 2 (4th Cir. 2004)
- *Clean Harbors, Inc. v. John Hancock Life Ins. Co.*, 64 Mass. App. Ct. 347, 365, 833 N.E.2d 611 (2005)
- *A. W. Farrell Assocs., LLP v. Haddon*, 72 Mass. App. Ct. 1115, 893 N.E.2d 96 (2008)