FILED 07/16/97 NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE ROYAL K. HUNT, Debtor.	BAP No. UT-97-006
ROYAL K. HUNT, Appellant, v. JOHN H. HARR, Appellee.	Bankr. No. 92B-24455 Chapter 7 ORDER AND JUDGMENT*

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

Before PUSATERI, BOHANON, and ROBINSON, Bankruptcy Judges.

PUSATERI, Bankruptcy Judge.

After examining the briefs and appellate record, the Court has determined unanimously to grant Hunt's request for a decision on the briefs. See Fed. R. Bankr. P. 8012; 10th Cir. BAP L.R. 8012-1(a). The case is therefore submitted without oral argument.

Debtor Royal K. Hunt appeals an order denying a motion to reopen his bankruptcy case. Because he has failed to supply the Court with a record sufficient to show that the Bankruptcy Court abused its discretion in denying the

* This order and judgment has no precedential value and may not be cited, except for the purposes of establishing the doctrines of law of the case, res judicata, or collateral estoppel. 10th Cir. BAP L.R. 8010-2.

motion, this Court must affirm.

FACTS

In 1990, Ernest and Verda Clark obtained a judgment against Royal K. Hunt and others in a Utah state court. In 1992, Hunt filed for bankruptcy, listing the Clarks as unsecured, nonpriority creditors. He also listed as assets various pieces of real property, including one ("the Disputed Property") that became the focus of the present dispute. He received a chapter 7 discharge in October 1992.

The following year, the trustee of Hunt's bankruptcy estate abandoned a number of estate assets, including the Disputed Property, mailing a notice of his action to the Clarks' counsel, among others. The Clarks thereafter filed a proof of claim indicating their judgment was an unsecured, nonpriority claim. In August 1994, based on the proof of claim, the Clarks received a distribution from the bankruptcy estate that paid part of their claim. Hunt's bankruptcy case was closed a month later.

A few weeks after receiving the distribution, the Clarks assigned their interest in the state court case to John H. Harr. A month later, Harr tried to execute on the Disputed Property on the strength of the state court judgment. Hunt appeared and convinced the state trial court to set aside the execution. Harr appealed and the Utah Court of Appeals ruled that the Clarks' judgment had automatically created a lien on Hunt's real property when the judgment was entered, and that the resulting lien had passed through bankruptcy unaffected because it was not avoided during the bankruptcy case. Hunt appealed but the Utah Supreme Court denied certiorari in June 1996, and no further appeal was taken.

For some reason not disclosed in the record on appeal, Harr then filed a new writ of execution which Hunt apparently asked the state court to stay. About the same time, Hunt filed a motion asking the Bankruptcy Court to reopen his bankruptcy case in order to declare that Harr had no valid lien because: (1) the

claim asserted against Hunt's bankruptcy estate was not an allowed secured claim so the judgment lien was void under 11 U.S.C.A. §506(d); (2) the Clarks had failed to file a secured claim and had to do so to retain their secured status since the Bankruptcy Court had exclusive jurisdiction over the assets of his bankruptcy estate; (3) the Clarks waived their judgment lien "by proving their entire claim" as an unsecured one; and (4) the Clarks did not take advantage of any of the mechanisms available in the bankruptcy proceeding "to look to the real property" to satisfy their claim, or to except their judgment from Hunt's discharge. In the event this motion succeeded, Hunt indicated he intended to seek contempt sanctions against Harr and his attorney. Harr opposed the motion to reopen the bankruptcy case.

The Bankruptcy Court held a hearing on Hunt's motion on October 23, 1996, and denied all the relief he sought. Hunt's counsel prepared an order to that effect which was entered on January 14, 1997. The order does not give any basis or explanation for the Bankruptcy Court's decision. Hunt then appealed, and in the appeal docketing statement, Hunt's counsel indicated no transcript was required for the appeal. The parties have not informed this Court whether the Bankruptcy Court announced findings and conclusions at the hearing or simply denied Hunt's motion without elaboration.

DISCUSSION

Section 350(b) of the Bankruptcy Code provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." Within the parameters of this provision, the decision whether to reopen a case is committed to the broad discretion of the Bankruptcy Court. Nintendo Co. v. Patten (In re Alpex Computer Corp.), 71 F.3d 353, 356 (10th Cir. 1995). Such decisions may be reversed on appeal only when the lower court has abused its discretion. The Tenth Circuit defines "abuse of

discretion" to be "an arbitrary, capricious, whimsical, or manifestly unreasonable judgment." United States v. Cardenas, 864 F.2d 1528, 1530 (10th Cir. 1989).

Local Rule 8009-1(e) of the Tenth Circuit Bankruptcy Appellate Panel provides: "[T]he excerpts of the record must include the transcripts necessary for review in light of the standard of review to be applied to the issues before the court." Without either a transcript or the parties' statement that the court offered no explanation for its ruling, we find it impossible to conclude the Bankruptcy Court abused its discretion by declining to reopen Hunt's case. While the Supreme Court has said, "[a] district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence," Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990), the record before us gives no clue how the Bankruptcy Court viewed the law or assessed the evidence. From the record presented, it is certainly possible the court might have felt that Hunt's claims could be decided by the state court where the execution proceedings were pending or that the claims had already been decided by the state courts and their decision (whether correct or not) became final when Hunt failed to appeal the Utah Supreme Court's denial of certiorari. Whatever the reason for the Bankruptcy Court's decision actually was, Hunt has not shown the decision was "arbitrary, capricious, whimsical, or manifestly unreasonable."[1]

Affirmed.

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[1] We do question the propriety of a creditor filing a claim as totally unsecured if the creditor truly believes it has a lien with some value, even after the trustee has abandoned the property subject to the lien. However, the record does not preclude the possibility the lien was worthless when the claim was filed and only gained value later.