

December 22, 1998

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE RICHARD STEVEN PARRIN
and CONSTANCE ANNE PARRIN,

Debtors.

BAP No. KS-97-055

RICHARD STEVEN PARRIN and
CONSTANCE ANNE PARRIN,

Appellants,

Bankr. No. 97-20238
Chapter 7

v.

BRENDA PORTER HELMS; JANICE
E. STANTON, Esq.; and MARK
SCHOTTLER, Esq.,

Appellees.

ORDER AND JUDGMENT*

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

Before BOHANON, BOULDEN, and CORNISH, Bankruptcy Judges.

BOHANON, Bankruptcy Judge.

The issue in this appeal concerns whether or not the appellees' motion to compel the Parrins, who are the debtors and the appellants, to appear at an examination under Rule 2004, Fed. R. Bankr. P., in an insider's bankruptcy case, violated the automatic stay. The trial court held it did not and we affirm.

The undisputed facts are that the Parrins filed their personal bankruptcy

* 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.

case in the District of Kansas. They were the sole shareholders and officers of the Bodin Corporation (Bodin) which is the chapter 7 debtor in an involuntary bankruptcy case filed in the Northern District of Illinois .

Counsel for Helms, the trustee in the Bodin case, wrote the Parrins' attorney requesting that the Parrins voluntarily appear for a Rule 2004 examination in Chicago in the Bodin case to testify concerning the affairs of Bodin. The parties engaged in a discussion about the expenses of travel from Kansas to Chicago and apparently were unable to reach an agreement. Helms' counsel then filed a motion in the Bodin case to compel the Parrins to appear in Chicago for the Rule 2004 examination. The Parrins resisted this request, and filed a motion in their own case seeking enforcement of the automatic stay and sanctions. The Kansas bankruptcy court denied the relief requested in the Parrins' motion, and the Parrins brought this appeal.

We have jurisdiction over this timely filed appeal. 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); 10th Cir. BAP L.R. 8001-1(a) and (d). The order denying the Parrins' motion to enforce the stay is a final order. Eddleman v. U. S. Dep't of Labor, 923 F.2d 782 (10th Cir. 1991), overruled in part on other grounds, Temex Energy v. Underwood, Wilson, Berry, Stein & Johnson, 968 F.2d 1003 (10th Cir. 1992). There are no disputed issues of fact, and therefore we review the Kansas bankruptcy court's ruling *de novo*. Pierce v. Underwood, 487 U.S. 552, 558 (1988).

11 U.S.C. § 362(a)(1) provides that the filing of a bankruptcy petition stays actions or proceedings "against the debtor." (Emphasis supplied). In denying the Parrins' motion the Kansas bankruptcy court stated:

The Court finds that the motion to compel the Debtors' attendance at the Rule 2004 examination does not violate the automatic stay. If the Debtors believe that the scope of the examination exceeds that which is proscribed in Rule 2004(b), they can raise that issue with the court in Bodin Corporation's bankruptcy proceeding. If Rule 2004 is complied with, the examination will relate to Bodin

Corporation's bankruptcy proceeding and will not constitute an action against the Debtors. Because Rule 9001(5) defines the Debtors as the debtor in Bodin Corporation's bankruptcy, they are subject to examination in that capacity. The automatic stay does not prevent a party from litigating with a debtor in the debtor's bankruptcy forum. See In re Roxford Foods, Inc., 12 F.3d 875, 878 (9th Cir. 1993); In re Toyota of Yonkers, Inc., 135 B.R. 471, 477 (Bankr. S.D.N.Y. 1992).

Aplt. App. at 27.

The analysis supplied by the Kansas bankruptcy court is absolutely correct. The motion to compel attendance at the Rule 2004 examination of the Parrins in their capacity as officers, and thus insiders of Bodin pursuant to 11 U.S.C. § 101(31)(B)(ii), is not an action or proceeding against the Parrins in their personal case. In its legal sense an "action" is "a lawsuit brought in a court; a formal complaint within the jurisdiction of a court of law," and a "proceeding" is "the form and manner of conducting juridical business before a court or judicial officer." Black's Law Dictionary, pages 28, 1204 (6th ed. 1990). Although the motion to compel the Parrins' attendance at the Rule 2004 examination may be an action or proceeding as contemplated in 11 U.S.C. § 362(a)(1), the motion to compel is a proceeding in the Bodin case and is not, in any sense of the term, a proceeding against the Parrins. It merely seeks to require the insiders of the debtor, Bodin, to testify concerning Bodin's business and affairs. This is something the Parrins, as insiders of Bodin, are required to do by Fed. R. Bankr. P. 9001(5)(A). See also 11 U.S.C. §§ 101(13) & (41), 341(a) & 343; Fed. R. Bankr. P. 2003(b) & 2004. As the Kansas bankruptcy court points out in its decision, if the examination exceeds the bounds of Rule 2004 the Illinois bankruptcy court in the Bodin bankruptcy case can deal with that issue.

Accordingly, the order of the Kansas bankruptcy court denying the Parrins' motion for enforcement of the automatic stay is affirmed.