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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:

CASCADE ENERGY & METALS
CORPORATION,

Debtors.

MEMORANDUM DECISION
AND ORDER

Bankruptcy No.:
87C-01916 Chapter 11

CASCADE ENERGY & METALS
CORPORATION,

Appellant,

Bankruptcy Civil
Proceeding No.:
88PC-0861

-vs-

JEFFERY G. BANKS, et. al.,

Appellees.

District Court No.:
90C-908W

This matter is before the court on the appeal of Cascade Energy & Metals Corporation ("Cascade Energy") and Telegraph Gold Corporation and Telegraph Resources, Inc. ("Telegraph Gold") from the Bankruptcy Court's order dismissing Cascade Energy's adversary proceeding for lack of subject matter jurisdiction. A hearing on the appeal was held March 22, 1991. Cascade Energy was represented by Delano S. Findlay. W. David Weston appeared pro se on behalf of Telegraph Gold. Appellees' Jeffery G. Banks, et. al., were represented by Ronald W. Goss.

Before the hearing, the court carefully considered the

memoranda submitted by the parties. Since taking the matter under advisement, the court has further considered the law and facts relating to this appeal and now renders the following memorandum decision and order.

FACTS

1. On September 16, 1985, the United States District Court for the District of Utah issued a final judgment in favor of the creditors in Cascade Energy and Metals Corporation v. Banks, Civil No. C-82-1223C. The district court awarded the creditors \$70,449.68 in wrongfully collected assessments, \$265,000.00 in attorneys' fees, and an equitable lien on certain claims to secure payment of the judgment.

2. On October 16, 1985 and April 19, 1986, the creditors recorded the district court's final judgment with the County Recorder of San Bernadino County, California.

3. On April 17, 1987, the debtor Cascade Energy filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Utah.

4. In January 1988, the debtor received notice of the creditors' 1986 recordation of the final judgment in San Bernadino County, California.

5. On February 16, 1988, Telegraph Gold, an affiliate

of the debtor, filed a plan of reorganization which was confirmed by the bankruptcy court on July 17, 1988.

6. On October 27, 1988, the debtor, Cascade Energy, commenced this adversary proceeding. The second amended complaint consisted of the following causes of action: 1) request for an adjudication of the parties' interest and rights to the Telegraph Mine property, 2) breach of sublease and joint operating agreements, 3) fraud for failure to disclose encumbrances against the Telegraph Mine, 4) slander of title, 5) tortious interference with Cascade Energy's plan of reorganization, and 6) tortious interference with prospective economic gain.

7. On May 21, 1989, the bankruptcy court granted partial summary judgment for Cascade Energy on its First Cause of Action, holding that the recordation of the judgment did not create a valid judgment lien on the debtor's mine claim. On July 7, 1989, the bankruptcy court supplemented its ruling and granted partial summary judgment to Cascade Energy holding that defendants' equitable lien was not properly perfected.

8. In November 1989, the creditors received notice of the creditors' 1985 recordation of the final judgment in San Bernadino County, California.

9. On June 5, 1990, the Honorable Glen E. Clark ruled

from the bench that Cascade Energy's adversary proceeding lacked subject matter jurisdiction. A final order dismissing the adversary proceeding was entered July 10, 1990, and this appeal followed.

DISCUSSION

I. Postconfirmation Jurisdiction of the Bankruptcy Court.

Congress has specifically provided for federal subject matter jurisdiction over proceedings related to cases under title 11. Congress granted the district court original but not exclusive jurisdiction of all proceedings arising under title 11 or arising in or related to cases under title 11. 28 U.S.C. § 1334(b) (Supp. 1990). Similar to 28 U.S.C. § 1334(b), section 157(a) provides that each district court may grant to the district's bankruptcy judges jurisdiction over "any or all proceedings arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 157(a) (Supp. 1990).

Therefore, the bankruptcy court, acting as a unit of the district court, has jurisdiction over all civil proceedings that fall within one of these classifications.

The Bankruptcy Code, however, does not clearly address the scope of jurisdiction following confirmation of the plan of reorganization. Nevertheless, the Code does clearly contemplate that some jurisdiction should extend throughout the

postconfirmation proceedings until the case is closed. See In re Terracor, 86 Bankr. 671, 676 (D. Utah 1988) (intent of Code is to retain jurisdiction until plan is completed). The Code provides in part as follows:

The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

11 U.S.C. § 1142(b) (emphasis added). Accordingly, the bankruptcy court retains jurisdiction to ensure completion of the approved plan.

A long history of cases similarly have defined postconfirmation jurisdiction.¹ Courts generally have held that the bankruptcy court may retain jurisdiction necessary to carry out the plan of reorganization. See, e.g., In re Tilco, Inc., 558 F.2d 1369, 1372 (10th Cir. 1977); In re Terracor, 86 Bankr. 671, 676 (D. Utah 1988); In re Tri-L Corp., 65 Bankr. 774, 778

¹ At least one commentator contends that postconfirmation jurisdiction is as broad as the jurisdiction provided under 28 U.S.C. § 1334(b). See Seifert, The Bankruptcy Code and Court in the Affairs of a Reorganized Debtor, 17 Colo. Law. 215 (1988). Seifert reasons that the bankruptcy code creates jurisdiction of all cases arising under title 11, or arising in or related to cases under title 11. Although the "estate" may cease to exist after confirmation, the "case" continues until a final order. Thus, the statutory basis for broad jurisdiction continues after confirmation. Id.

(D. Utah 1986).

In addition, the plan itself may provide additional basis for finding subject matter jurisdiction. Terracor, 86 Bankr. at 676. The language of the plan, however, cannot retain jurisdiction beyond the scope of the Bankruptcy Code. Id. Cascade Energy's plan of reorganization specifically retains jurisdiction "to insure that the purposes and intent of the Plan are carried out" and "to enforce all causes of action which may exist on behalf of the Debtor." (Plan of Reorganization, Art. IV., ¶ 4.10). Therefore, both the Bankruptcy Code and the plan of reorganization give the bankruptcy court continuing jurisdiction over the proceedings in the present case.

Although the bankruptcy court retains jurisdiction, the scope of jurisdiction depends largely upon the particular facts of each case. See In re Tilco, Inc., 558 F.2d at 1372; In re Pittsburgh Terminal Coal Corp., 183 F.2d 520 (3d Cir. 1950). In the present case, although the plan reserves jurisdiction to enforce all causes of action which may exist, Cascade Energy did not receive notice of all the liens attached to its California property until well beyond the date of the confirmation. Nevertheless, Cascade Energy did file an adversary proceeding one day after confirmation, well within the 30-day objection period

allowed under the plan.² (Plan of Reorganization, Art. V., § 5.1). On May 21, 1989 and July 7, 1989, the bankruptcy court ruled that the district court's final judgment was improperly recorded, but declined to further enforce Cascade Energy's cause of action. This case demonstrates, therefore, that it is neither practical nor necessary that all proceedings related to a Chapter 11 case be completed before confirmation of the plan of reorganization. In cases such as this, the Code provides that the bankruptcy court may retain ample jurisdiction to promote justice and fair play.

The retention of jurisdiction to resolve the adversary proceeding also is necessary to complete the plan of reorganization. Paragraph 2.14 of the plan states that "all adversary proceedings for lien avoidance and objections to claims" must be settled before any unsecured claims will be paid. (Plan of Reorganization, Art. II., ¶ 2.14.1.4). Therefore, it is necessary to resolve the present adversary proceeding to properly determine the payment and priority of claims. As a result, the court is of the opinion that the bankruptcy court has subject

² Although the adversary proceeding filed on July 28, 1988 was dismissed on October 26, 1988 because of the inadvertence of appellant's counsel to attend a pretrial hearing, Cascade Energy immediately refiled the adversary proceeding on October 27, 1988. Subsequently, the bankruptcy court also dismissed the October 27, 1988 adversary proceeding, which is the subject of this appeal, for lack of subject matter jurisdiction.

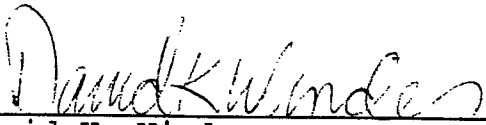
matter jurisdiction to decide Cascade Energy's adversary proceeding initiated after the confirmation of the plan of reorganization.

Accordingly, based on the foregoing and good cause appearing, IT IS HEREBY ORDERED that

1. The bankruptcy court's order dismissing appellant's adversary proceeding for lack of subject matter jurisdiction is reversed and the case is remanded to that court for resolution of that proceeding.

2. This order shall suffice as the court's ruling on this appeal and no further order need be prepared by counsel.

Dated this 23rd day of April, 1991.



David K. Winder
United States District Judge

Mailed a copy of the foregoing to the following named counsel this 23rd day of April, 1991.

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