

UNPUBLISHED

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re)
)
BEN LOMOND SUITES, LTD.,) Bankruptcy Case No. 86C-03553
a Utah limited partnership,)
) Chapter 11
Debtor.)
_____)
)
REPUBLIC NATIONAL BANK OF) Adversary Proceeding No. 96PC-2270
NEW YORK,)
)
Plaintiff,)
)
vs.)
)
RSH LTD., a Utah limited partnership;)
RSH, INC., a Utah corporation and)
general partner of RSH LTD.; BEN)
LOMOND SUITES, LTD., a former)
Utah limited partnership; CITIZENS)
NATIONAL BANK OF CANTON,)
OHIO; D & N BANK OF TROY,)
MICHIGAN; WASHINGTON FEDERAL)
SAVINGS; and JOHN AND JANE)
DOES 1-200,)
)
Defendants.)
_____)
)
CITIZENS NATIONAL BANK, a) Adversary Proceeding No. 96PC-2316
wholly owned subsidiary of FIRSTMERIT)
CORPORATION, an Ohio corporation,)

and D & N BANK, a federal savings)
bank, formerly known as D & N)
SAVINGS BANK, a federal savings bank,)
)
Plaintiffs,)

vs.)

REPUBLIC NATIONAL BANK OF NEW)
YORK, a national banking association,)
successor in interest by merger to)
former CROSSLAND FEDERAL)
SAVINGS BANK, a federal savings bank,)
)
Defendants.)

REPUBLIC NATIONAL BANK OF)
NEW YORK,)
)
Counter-Claimant,)

vs.)

CITIZENS NATIONAL BANK, a wholly)
owned subsidiary of FIRSTMERIT)
CORPORATION, an Ohio corporation,)
and D & N BANK, a federal savings)
bank, formerly known as D & N)
SAVINGS BANK, a federal savings bank,)
)
Counter-Respondents.)

REPUBLIC NATIONAL BANK OF)
NEW YORK,)
)
Third-Party Plaintiff,)

vs.)

RSH LTD., a Utah limited partnership;)	
RSH, INC., a Utah corporation and)	
general partner of RSH LTD.; BEN)	
LOMOND SUITES, LTD., a former)	
Utah limited partnership,)	
)	ORDER DISMISSING AND REMANDING
Third-Party Defendants.)	PROCEEDINGS

The Motion for Dismissal of Complaint or for Abstention and the Motion for Remand and for Sanctions came before the Honorable Glen E. Clark, United States Bankruptcy Judge, on January 14, 1997. The following appearances were made: J. Randall Call and Sally B. McMinimee on behalf of Republic National Bank of New York; Steven J. McCardell, Penrod W. Keith, and R. Willis Orton on behalf of Citizens National Bank of Canton, Ohio; D & N Bank of Troy, Michigan; and Washington Federal Savings; and Jeffrey L. Silvestrini, Julie A. Bryan, and Daniel J. Torkelson on behalf of RSH, Ltd. and RSH, Co.

FACTS

On August 19, 1986, Ben Lomond Suites, Ltd. (debtor) commenced a voluntary Chapter 11 in this Court. Shortly after the petition date, the debtor began negotiations with Western Savings & Loan (WS&L), a secured creditor, and a committee of suite owners (Suite Owners Committee) which resulted in the filing of a joint Plan of Reorganization (Plan). The Plan provided for a Suite Owner's Partnership to acquire all significant assets of the debtor's estate. The Suite Owner's Partnership was organized as RSH Ltd., a Utah limited partnership (RSH).

The Plan was confirmed on December 31, 1986. Article X of the Plan provides:

The Court, following confirmation of the Plan, shall retain jurisdiction over the Debtor's case and proceedings or other related matters arising in or relating to the Debtor's case or arising under the Bankruptcy Code to the full extent permitted by §1127(b) of the Code.

Pursuant to the Plan, all of the significant assets of the debtor's estate were transferred from the reorganized debtor to RSH by May 1990.

On May 30, 1990, the reorganized debtor filed a motion to close the bankruptcy case. The motion stated that the case has been fully administered and should be closed. Notice of the hearing on the motion was provided to all creditors and parties in interest. An order closing the bankruptcy proceeding was entered on July 2, 1990.

In October 1995, Citizens National Bank (Citizens) and D & N Bank (D & N) filed a complaint against CrossLand Savings Bank (CrossLand), in the Third Judicial District Court for the State of Utah, *Citizens National Bank v. CrossLand Federal Savings Bank*, Civil No. 950907225 (State Court Action). The complaint alleged various state law claims arising from certain loan participation agreements between Republic Bank of New York (Republic)¹, as the lead participant, and Citizens and D & N as participants. The complaint was amended by a Second Amended Complaint filed on October 22, 1996. Republic filed an answer and counter-claim against the plaintiffs and a third-party complaint in the State Court Action against the debtor, RSH Ltd., and related entities.

¹In February of 1996, CrossLand merged with Republic and is hereafter referred to as Republic.

On November 21, 1996, the State Court Action was removed to the Bankruptcy Court as Adversary Proceeding No. 96PC-2316 (Removed Adversary Proceeding).

On October 2, 1996, Republic filed a complaint in the United States Bankruptcy Court, *Republic National Bank of New York v. RSH Ltd., a Utah limited partnership; RSH, Inc., a Utah corporation and general partner of RSH Ltd.; Ben Lomond Suites, Ltd., a former Utah limited partnership; Citizens National Bank of Canton, Ohio; D & N Bank of Troy, Michigan; Washington Federal Savings, and John and Jane Does 1-200*, Adversary Proceeding No. 96PC-2270 (Adversary Proceeding). The complaint sets forth four causes of action against RSH, asserting that RSH committed a material breach of certain provisions of the Plan and includes a fifth cause of action seeking a declaratory judgment with respect to certain claims made by Citizens and D & N in the State Court Action.

Citizens and D & N have filed a Motion for Dismissal or in the alternative for Abstention with respect to the Adversary Proceeding and a Motion for Remand and for Sanctions with respect to the Removed Adversary Proceeding.

JURISDICTION

Bankruptcy courts have only the jurisdiction and powers expressly, or by necessary implication, granted by Congress. *In re Gardner*, 913 F.2d 1515, 1517 (10th Cir. 1990). This limited jurisdiction cannot be expanded by a plan of reorganization. "A reservation of jurisdiction beyond what is necessary to effectuate the plan of reorganization is beyond the power of the

bankruptcy court." *In re Tri-L Corp.*, 65 B.R. 774, 778 (Bkrtcy. D. Utah 1986). The Court has jurisdiction over two types of proceedings, "core proceedings" and "related proceedings."

Bankruptcy courts have jurisdiction over core proceedings pursuant to 28 U.S.C. § 157. A core proceeding is a proceeding that has no existence outside of bankruptcy. *In re Alexander*, 49 B.R. 733, 736 (Bankr. D.N.D. 1985). Republic argues that the matter before the Court calls for an interpretation of the Plan and that, as such, is a core proceeding. The fact that a dispute may require an interpretation of a confirmed plan does not necessarily make the dispute a core proceeding. "[A] plan, once confirmed, takes on a life of its own, ordering the parties to perform obligations to which each has agreed at the time the plan comes into existence." *In re Alpex Computer Corp.*, 71 F.3d 353, 357 (10th Cir. 1995). A confirmed plan has characteristics of both a contract and a judgment. "While a confirmed plan functions as a judgment with regard to those bound by the plan, *Bizzell v. Hemingway*, 548 F.2d 505, 507 (4th Cir. 1977), we think the claim here is more analogous to a contract claim." *Paul v. Monts*, 906 F.2d 1468, 1471 n.3 (10th Cir. 1990). (Noting that a third party to the plan who has not submitted to the jurisdiction of the bankruptcy court is simply dealing with the plan on a contractual level.) State courts are well qualified to adjudicate contract disputes and to enforce judgments. The Removed Adversary existed outside of bankruptcy and the Adversary Proceeding, which is nearly identical to the Removed Adversary, could exist outside of bankruptcy. "Actions which do not depend on the bankruptcy laws for their existence and which could proceed in another court are not core proceedings." *Gardner*, 913 F.2d at 1518. The Court finds that the controversy before the Court is in the nature of a contract dispute which can be adjudicated in state

court. Accordingly, neither the Removed Adversary Proceeding nor the Adversary Proceeding is a core proceeding.

Related proceedings are civil proceedings that, in the absence of a bankruptcy petition, could have been brought in a district court or state court. *In re Colorado Energy Supply, Inc.*, 728 F.2d 1283, 1286 (10th Cir. 1984). "The test for determining whether a civil proceeding is related in bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Gardner*, 913 F.2d at 1518 (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). Although the proceeding need not be against the debtor or his property, a proceeding is related to the bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action in any way, thereby impacting the handling and administration of the bankruptcy estate.

The Court can find nothing in the Adversary Proceeding or the Removed Adversary Proceeding that would affect the reorganized debtor's rights, liabilities, options or freedom of action in any way, nor can the Court find that this litigation will affect, in any conceivable way, the handling or administration of the bankruptcy estate. The Court finds that there is no bankruptcy estate to administer. The bankruptcy estate ceased to exist at the point when the transfer of estate property from the Reorganized Debtor to RSH became effective.² *In re Hall's Motor Transit Co.*, 889 F.2d 520 (3rd Cir. 1989).

²Technically, unless the plan provides otherwise, the bankruptcy estate ceases to exist at the moment the confirmed plan becomes effective. 11 U.S.C. § 1141(b).

The Order closing the case, more than three years after confirmation of the Plan, indicates that the estate was fully administered. Today, more than six years after the case was ordered closed and more than nine years after confirmation of the Plan, the Court finds that it has no jurisdiction to hear these matters. If a bankruptcy court lacks jurisdiction, it is required as a matter of law to remand a state court action because removal under 28 U.S.C. § 1452(a) is contingent on jurisdiction under 28 U.S.C. § 1334. *Personette v. Kennedy (In re Midgard Corp.)*, 1997 WL 51740, (10th Cir. BAP filed Feb. 4, 1997). Wherefore, it is hereby

ORDERED that Adversary Proceeding no. 96PC-2270 is dismissed for lack of jurisdiction, and it is

ORDERED that Adversary Proceeding no. 96PC-2316 is remanded to state court for the reason that this Court lacks jurisdiction to adjudicate the matter.

DATED this 6th day of March, 1997.

BY THE COURT:

/S/
GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

--oo0oo--

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing to the following this 7th day of March, 1997.

STEVEN J MCCARDELL
PENROD W KEITH
LEBOEUF LAMB GREENE & MACRAE
136 SOUTH MAIN STREET SUITE 1000
SALT LAKE CITY UT 84101

R WILLIS ORTON
MACKEY PRICE & WILLIAMS
900 FIRST INTERSTATE PLAZA
170 SOUTH MAIN STREET
SALT LAKE CITY UT 84101

J RANDALL CALL
SALLY B MCMINIMEE
PRINCE YEATES & GELDZAHLER
CITY CENTRE I SUITE 900
175 EAST 400 SOUTH
SALT LAKE CITY UT 84111

JEFFREY L SILVESTRINI
JULIE A BRYAN
DANIEL J TORKELSON
COHNE RAPPAPORT & SEGAL
PO BOX 11008
SALT LAKE CITY UT 84147-0008

/S/

Judicial Assistant to Judge Clark