

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

97

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In re	)	Bankruptcy Case No. 80M-00361
	)	
ALLEN MARTENSEN and	)	
BARBARA MARTENSEN,	)	Civil Proceeding No. 82PM-1228
	)	
Debtors.	)	
	)	
MARC BINGHAM, dba PHONE	)	
DIRECTORIES COMPANY,	)	
	)	
Plaintiff.	)	
	)	
-vs-	)	
	)	
ALLEN MARTENSEN aka AL	)	
MARTENSEN, dba NORTHEASTERN	)	
PHONE DIRECTORIES,	)	
	)	
Defendant.	)	MEMORANDUM OPINION

This case came before the court on debtor-defendant's motion to dismiss the civil proceeding. Plaintiff is represented by Lowell V. Summerhays and W. Andrew Clawson of Summerhays, Runyan & McLelland; defendant is represented by E. Craig McAllister. Counsel have submitted memoranda and have agreed that the court rule on the matter without oral argument.

Plaintiff and debtor-defendant entered into a contract on March 10, 1980 whereby debtor was to act as plaintiff's sales representative on an independent contractor basis. Debtor filed his Chapter 13 petition in this court on March 14, 1980. The business relationship between the parties continued until November 13, 1981, the debtor conducting most, if not all of his

business in the state of Ohio. On October 21, 1982, plaintiff filed this civil proceeding alleging breach of the aforementioned contract, violation of a covenant not to compete and other damage to plaintiff's business as a result of defendant's conduct in Ohio. Defendant responded to the complaint with a motion to dismiss based on lack of subject matter jurisdiction, also seeking, in the alternative, to have the court abstain from hearing the matter.

There has been considerable confusion regarding the jurisdiction of the bankruptcy court since the United States Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipeline Company, 485 U.S. \_\_\_\_\_, 102 S. Ct. 2858 (1982). This court is currently operating under the Emergency Rule promulgated by the United States District Court for the District of Utah. Pursuant to (c)(1) of the Rule, all cases under title 11 and all civil proceedings arising under title 11 or arising in or related to cases under Title 11 are referred by the district court to the bankruptcy judges. Further, the district court has held that, despite the Marathon ruling, 28 U.S.C. § 1471(b) is still valid in as much as it vests original jurisdiction in the district courts. In re Color Craft Press, Ltd., Civ. No. 83PC-0140 (slip op. Feb. 22, 1983); In re Richardson, Civ. No. 83PC-0139 (slip op. Feb. 22, 1983). Consequently, the issue raised by defendant's motion is whether the jurisdictional

grant of § 1471(b) is sufficiently broad to encompass the instant civil proceeding.

Section 1471(b) states:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

The legislative history indicates that this section "grants the bankruptcy courts broad and complete jurisdiction over all matters and proceedings that arise in connection with bankruptcy cases." H.R. Rep. No. 595, 95th Cong., 1st Sess. 48 (1977). While the jurisdiction granted by § 1471(b) is indeed broad, it is not limitless. There are three bases for jurisdiction: a proceeding must be one arising under title 11, arising in a case under title 11, or related to a case under title 11.

The phrase "arising under" has a well defined and broad meaning in the jurisdictional context. By a grant of jurisdiction over all proceedings arising under title 11, the bankruptcy courts will be able to hear any matter under which a claim is made under a provision of title 11.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 445 (1977).

The plaintiff's cause of action is based on breach of contract and other state law claims. There are no allegations or claims made under any provision of title 11; there is no need to

construe or implement any provision of the Bankruptcy Code. Accordingly, this proceeding is not one arising under title 11.

There is no exact definition in the legislative history of the remaining bases for jurisdiction, arising in or related to a case under title 11. The House Report does list examples of matters which would fall within the definition, although the list is by no means exhaustive. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 446 (1977). However, the mere assertion that the action has some relation to the debtor or to property of the estate is not sufficient to invoke the jurisdiction of the bankruptcy court.

The cases and commentators are in agreement that there must be some reasonable nexus between a civil proceeding and the title 11 case to bring the civil proceeding within the jurisdictional grant of § 1471(b). In re Chong, 12 B.R. 255 (D. Hawaii, 1981); In re Scrimpsheer, 17 B.R. 999 (N.D. N.Y., 1982); In re Wesco Products Co., 19 B.R. 908 (N.D. Ill., E.D., 1982); 1 COLLIER ON BANKRUPTCY ¶ 3.01, at 3-46 (15th ed. 1980); Selective Exercise of Jurisdiction in Bankruptcy-Related Civil Proceedings, 59 TEX. L. REV. 325 (1981).

Plaintiff contends that if he were to prevail in the case and the defendant became liable for the substantial amount of damages prayed for in the complaint, that this would affect the debtor's ability to perform under the plan. But the debtor has already made his final payment under the plan and the trustee is

in the process of making final disbursements and closing the case. Under these circumstances, there is no nexus between the civil proceeding and the debtor's main case; the outcome of the lawsuit will have absolutely no effect on the administration of the Chapter 13 plan. There is no basis for the exercise of jurisdiction under § 1471(b) and the civil proceeding should be dismissed.

Even if it were determined that there is a sufficient basis for jurisdiction, this court finds that abstention in this case is proper pursuant to § 1471(d). Accordingly, it is hereby ordered that defendant's motion to dismiss is granted. Defendant is to prepare an order consistent with this opinion.

DATED this 11 day of September, 1983.

BY THE COURT:

  
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GLEN E. CLARK  
UNITED STATES BANKRUPTCY JUDGE