FILED
United States Court of Appeals
Tenth Circuit

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ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: CLARK TANKLINES COMPANY,

Debtor,

ZIONS FIRST NATIONAL BANK,

Appellant,

and

WILLIAMSBURG SAVINGS BANK,

v.

CLARK TANKLINES COMPANY,

Appellee.

No. 87-2339
(D.C. No. 86-C-982)
(D. Utah)

ORDER AND JUDGMENT*

Before SEYMOUR and SETH, Circuit Judges, and SEAY, Chief Judge.**

**Honorable Frank H. Seay, Chief Judge, United States District Court for the Eastern District of Oklahoma, sitting by designation.

Appellant Zions First National Bank (Zions) appeals the decision of the United States Bankruptcy Court for the District of

*This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Utah, affirmed by the United States District Court. Zions presents issues in three areas: (1) adequate protection of an undersecured creditor; (2) perfection of security in leasehold interests in rolling stock; and (3) termination of the automatic stay by law pursuant to 11 U.S.C. § 362(e) (1976 & Supp. V, 1981). We affirm.

The following brief procedural and factual history of this bankruptcy case is taken in part from the district court memorandum decision and order.

The debtor, Clark Tanklines Company (Clark), was engaged in the interstate transportation of goods as a licensed commercial motor carrier. Its business was located in Salt Lake City, Utah, with a terminal in Duchesne, Utah. Clark obtained part of its financing through a series of loans made by Zions and Williamsburg Savings Bank. These loans were secured by, among other property in which Clark did not hold an interest, Clark's real property in Salt Lake City and Duchesne, Clark's leasehold interest in certain rolling stock, and Clark's interest in other personal property. Clark's only interest in some of the vehicles purportedly held as collateral by Zions was a leasehold interest. Zions attempted to perfect a security interest in Clark's leasehold interest in these vehicles by having Zions' name noted as a lienholder on the titles and by filing a UCC-1 filing statement listing these certain vehicles by unit number, make and designation, but without indicating that Clark owned only a leasehold interest in the vehicles.

Clark filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on February 7, 1986, continuing to operate its business as a debtor in possession. Zions filed a motion for relief from automatic stay on April 3, 1986. The bankruptcy court issued its findings of fact and conclusions of law on August 6, 1986, dated as of July 7, 1986. Zions was denied relief from the stay, but the court ordered that Clark make adequate protection payments to Zions. Zions appealed to the district court. Following oral argument to the district court on appeal, Clark moved in the bankruptcy court to convert its Chapter 11 proceeding to a Chapter 7 proceeding. This motion has been granted. The district court upheld the bankruptcy court's order, and Zions has appealed to this court.

I.

Zions asks us to review two issues concerning the bankruptcy court's fashioning of adequate protection for it as an undersecured creditor. We review decisions concerning adequate protection of an undersecured creditor during the automatic stay of a bankruptcy proceeding under a clearly erroneous standard. In re O'Connor, 808 F.2d 1393, 1395 (10th Cir. 1987); In re Martin, 761 F.2d 472, 474 (8th Cir. 1985); Bankr. R. 7052; Bankr. R. 8013.

The bankruptcy court scheduled monthly cash payments from Clark to Zions to cover depreciation of certain vehicles in which Zions had a valid security interest. The court ordered the payments to begin as of June 15, 1986, thirty days after the final hearing on Zions' motion for relief under the automatic stay. Zions requests that those payments be ordered to begin as of the date of Clark's original bankruptcy petition, February 7, 1986.

Zions cites the transcript of a ruling from the bench in a case in the District of Utah Bankruptcy Court and an unpublished decision of the United States District Court for the District of Utah for authority that such relief should begin as of the filing date. Under 10th Cir. R. 36.3, this court will not recognize an unpublished opinion as authority, much less an unpublished order from the bench.

We are even less inclined to follow this proposal because of its policy implications. As soon as a debtor files a petition with the bankruptcy court, 11 U.S.C. § 362 imposes an automatic stay on any activity by which the debtor's creditors could convert any of the debtor's property to their own control. The automatic stay is designed as a four-month "breathing spell" during which time the debtor has an opportunity, unhindered by pressures from its creditors, to reorganize and order its financial affairs. The stay is also designed to prevent some creditors from gaining an advantage in the distribution of the debtor's property to the detriment of other creditors. In re Ahlers, 794 F.2d 388, 393-94 (8th Cir. 1986), rev'd on other grounds sub nom. Norwest Bank Worthington v. Ahlers, 108 S. Ct. 963 (1988); In re Mellor, 734 F.2d 1396, 1399 (9th Cir. 1984); H.R. Rep. No. 595, 95th Cong., 2d Sess. 340, reprinted in 1978 U.S. Code Cong. & Admin. News 5963, 6296-97; Sack, Adequate Protection, 2 Bank. Dev. J. 21, 26-27 (1985). An undersecured creditor desiring relief from the automatic stay may request such relief. 11 U.S.C. § 362(d). The bankruptcy court may deny relief from the automatic stay but grant the creditor adequate protection from a loss in the value of its collateral. 11 U.S.C. § 361.

In the case before us, the district court found that a four-month delay between the filing of the petition and the commencement of adequate protection payments was not unreasonable. It further found that absent congressionally mandated fixed dates for the commencement of adequate protection payments, the bankruptcy court can exercise its discretion in fashioning that remedy. The district court relied on In re Ahlers, 794 F.2d at 394, for the proposition that adequate protection should provide a creditor with its bargained for rights, as nearly as possible, and that bankruptcy courts must review each bankruptcy on a case by case basis when fashioning relief. Note that in this case the creditor's adequate protection consisted of preservation of the value of Zions' security interest in rolling stock in the face of depreciation.

We find no error in the district court's conclusion concerning this matter. See H.R. Rep. No. 595, 95th Cong. 2d Sess. 339, reprinted in 1978 U.S. Code Cong. & Admin. News 5963, 6295. The bankruptcy court has wide latitude in fashioning protection for the undersecured creditor which will also protect the debtor's other creditors and allow the debtor an opportunity to construct a plan for financial rehabilitation. In re Briggs Transp. Co., 780 F.2d 1339, 1349 (8th Cir. 1985). "[E]quitable principles govern the exercise of bankruptcy jurisdiction." Id.

at 1343; see also, United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 108 S. Ct. 626 (1988)(§ 362(d)(1) does not protect a secured party's right to immediate foreclosure).

Second, Zions complains that the bankruptcy court erred when it allowed Clark to buy out Zions' interest in three pieces of rolling stock as part of the adequate protection relief it fashioned for Zions. Zions claims that it was permanently precluded from other actions it could have taken with respect to its interest in the three pieces of rolling stock. The district court cited § 361[b](3) for the proposition that the bankruptcy court could provide creditors with the "indubitable equivalent of such entities' interest in such property." The district court went on to find that a buy out of the cash value of Zions' security interest was an "indubitable equivalent" of Zions' interest. This finding was not clearly erroneous.

II.

The bankruptcy court found that no adequate protection cash payment covering depreciation needed to be made for certain rolling stock in which Zions claimed to have a security interest. The bankruptcy court found that, as a matter of state law, Zions had failed to perfect its security interest in the equipment by neglecting to note on the motor vehicle title certificates to the vehicles and on the UCC-1 financing statement that it held a security interest in Clark's leasehold interest.

A bankruptcy court is bound by state law in the determination of ownership interests in property. See, e.g., Pearson v. Salina Coffee House, Inc., 831 F.2d 1531, 1532-33 (10th Cir. 1987)(whether security interest is perfected). In Utah, it is well settled that:

> The general rule governing liens on motor vehicles not in a dealer's inventory is that perfection of a lien is governed exclusively by the filing and title provisions of the Motor Vehicle Act, U.C.A., 1953, §§ 41-1-81 to 41-1-86. See §§ 41-1-80, 41-1-87, 70A-9-302(3)(b) and (4). Under these provisions the perfection of a lien on [motor vehicles] depends upon the appearance of the lien interest on the vehicle's certificate of title. See § 41-1-83.

Draper Bank and Trust Co. v. Lawson, 675 P.2d 1174, 1177 (Utah 1983). The bankruptcy court found that Zions did not show the lien interest, that of Clark's leasehold interest, on the certificates of title and therefore Zions did not have a perfected security interest in these vehicles for the court to protect in Clark's bankruptcy. The court did not err in this matter.

Further, Zions claims that Clark did not have standing to raise the issue of Zions' perfection of a security interest in vehicles in which Clark had no equity interest. The district court ruled that Clark's leasehold interest in the vehicles was a property interest, giving Clark standing to raise the issue of Zions' perfection of its security interest in the vehicles. We agree.

III.

Finally, Zions claims that the bankruptcy court's order calling for adequate protection of Zions' collateral during the automatic stay was moot, since the bankruptcy court's final order on Zions' motion for relief from stay was filed more than thirty days after the final hearing on Zions' motion for relief from stay, hence the automatic stay had ceased to exist by operation of law, pursuant to 11 U.S.C. § 362(e) and Bankr. R. 4001(b). The district court ruled that this issue was moot because Clark's bankruptcy had been converted to a Chapter 7. The import of the conversion was that since Clark was not making the payments required by the bankruptcy court's order fashioning adequate protection for Zions, the stay was terminated as to Zions. We are not persuaded by appellant's arguments.

The judgment of the United States District Court for the District of Utah is AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM