The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed April 18, 2012

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	**CHAPTER 11**
NORTH PARK TERRACE	§	
APARTMENTS V, LTD.,	§	**CASE NO. 10-45828**
DEBTOR.	§	
	§	
NORTH PARK TERRACE	§	
APARTMENTS V, LTD.,	§	
PLAINTIFF,	§	
	§	**ADVERSARY PROCEEDING**
V.	§	
	§	**NO. 12-04009-DML**
EDWIN P. KEIFFER, KIM E. MOSES,	§	
AND WRIGHT GINSBERG BRUSILOW	§	
P.C.,	§	
DEFENDANTS.	§	

REPORT AND RECOMMENDATION

TO THE HONORABLE JOHN H. MCBRYDE, UNITED STATES DISTRICT JUDGE:

Now comes D. Michael Lynn, U.S. Bankruptcy Judge, and makes this, his report and recommendation respecting the above-named Plaintiff's motion to withdraw the reference (the "Motion") as to the above-captioned adversary proceeding (the "Adversary").

I. Background

The Adversary seeks damages from the above-named Defendants based on the theory that they committed malpractice while acting as Plaintiff's bankruptcy counsel in Plaintiff's chapter 11 case. Plaintiff asserts that it is entitled to a jury trial of the Adversary and that therefore the reference of the Adversary to the bankruptcy court should be withdrawn.

In addition to the Adversary, Defendant Wright Ginsberg Brusilow, P.C. ("WGB"), has filed an application seeking compensation (the "Application") for work done by Defendants as bankruptcy counsel to Plaintiff in its chapter 11 case. Defendants have filed a motion to consolidate proceedings on the Application with the Adversary. I have deferred acting on that motion pending disposition of the Motion.

Plaintiff filed its chapter 11 petition on September 4, 2010. Plaintiff was the owner of six office properties in the Dallas-Fort Worth area. Plaintiff's lender at the time of the chapter 11 case was One West Bank, FSB ("OWB"). OWB succeeded to the ownership of the loans to the Plaintiff through its acquisition of Plaintiff's prior lender, La Jolla Bank, FSB, after the latter was placed in FDIC receivership.

Plaintiff's initial plan of reorganization ceased to be feasible after I made certain findings in June of 2011 respecting the value of Plaintiff's assets and the amounts owed to OWB. Although a plan was ultimately confirmed on October 21, 2011, the end result of that plan was foreclosure by OWB on all of Plaintiff's office properties.

Subsequently, WGB filed the Application. Plaintiff promptly objected to the Application and then filed the Adversary in the 352nd District Court of Tarrant County, Texas. On February 7, 2012, WGB removed the Adversary to my court. The Motion followed.

On March 19, 2012, I held a status conference respecting the Motion. At the conclusion of the status conference, I indicated my view that disposition of the Motion would turn on whether Plaintiff was entitled to a jury trial. At my invitation the parties filed supplemental briefs addressing that issue.

II. Discussion

In my opinion, the Adversary is properly before the bankruptcy court. I do not believe that Plaintiff is entitled to a jury trial. Accordingly, I do not believe the reference should be withdrawn.[1]

First, it is true that in the Fifth Circuit a debtor does not lose the right to trial by jury merely by reason of its initiation of a bankruptcy case. *See In re Jensen*, 946 F.2d 369, 373 (5th Cir. 1991), *abrogated on other grounds by Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 112 S.Ct. 1146, 117 L. Ed. 2d 391 (1992). However, *Jensen* involved pre-petition claims owned by the debtor whereas Plaintiff's case is based on the conduct of WGB post petition. Thus, the Adversary arose in the chapter 11 case and is therefore a core proceeding. *See Wilborn v. Wells Fargo Bank, N.A. (In re Wilborn)*, 609 F.3d 748, 753 (5th Cir. 2010) (concluding that claims which arose during the administration of plaintiffs' chapter 11 cases were core matters to be adjudicated by the bankruptcy court) (citing *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987)); *Pettus Props. Inc. v. VFC Partners 8, LLC (In re Pettus Props., Inc.)*, 2012 WL 956915, at *3 (Bankr.

[1] I do not in this report and recommendation reach the question of whether under the reasoning of *Stern v. Marshall*, --- U.S.----, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011), the bankruptcy court cannot in any dispute exercise the judicial power of the United States and therefore cannot try the Adversary.

W.D.N.C. Mar. 20, 2012) (noting that claims based on post-petition conduct are "core" proceedings that "arise in" the bankruptcy case) (citing *Shubert v. Wellspring Media, Inc.* (*In re Winstar Communs., Inc.*), 335 B.R. 556, 565 (Bankr. D. Del. 2005)).

Moreover, unlike in *Jensen*, WGB has submitted to bankruptcy court jurisdiction by filing the Application. The *Jensen* court indicated that the debtor's right to a jury would have been lost if the defendant there had filed a claim. *See In re Jensen*, 946 F.2d at 374.[2] The same rationale should apply where, as here, a defendant seeks compensation from the bankruptcy estate.

Indeed, the Adversary and the Application are intimately related and both involve administration of the estate and so are core proceedings. *See* 28 U.S.C. § 157(b)(2)(A); *Sheridan v. Michels (In re Sheridan)*, 362 F.3d 96, 128 (1st Cir. 2004) (noting that disputes over compensation of attorneys are core proceedings because they concern the administration of the estate) (citing *In re Delta Petrol. (P.R.), Ltd.*, 193 B.R. 99, 106 (D. P.R. 1996)); *In re Kennedy Mfg.*, 331 B.R. 744, 746 (Bankr. N.D. Ohio 2005) (stating that a matter involving the allowance of fees and expenses directly concerns the administration of the estate and such a matter is deemed a core proceeding as to which the bankruptcy court has jurisdictional authority to enter final orders).

It is also generally accepted that the bankruptcy court should police the professionals whose employment it authorizes. *Epixtar Corp. v. McClain & Co., L.C., CBIZ, Inc. (In re Epixtar Corp.)*, 414 B.R. 813, 818 (Bankr. S.D. Fla. 2009) (noting that a malpractice action for work done during a bankruptcy case is a core proceeding because it directly concerns the bankruptcy court's supervision of professionals employed by it); *Baron & Budd, P.C. v.*

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[2] The Fifth Circuit so distinguished the reasoning of the Court of Appeals for the Seventh Circuit in *N.I.S. Corp. v. Hallahan* (*In re Hallahan)*, 936 F.2d 1496 (7th Cir. 1991).

Unsecured Asbestos Claimants Comm., 321 B.R. 147, 163 (Bankr. D.N.J. 2005) (stating that the regulation of professional ethics is "squarely within the purview of the bankruptcy court"); *Lucas v. Nickens (In re Lucas)*, 312 B.R. 559, 570 (Bankr. D. Md. 2004) (noting that bankruptcy courts maintain core jurisdiction over "policing of professionals whom debtors pay to render service in connection with their cases.") (quoting *McDow v. We the People Forms and Serv. Ctrs., Inc.* (*In re Douglas*), 304 B.R. 223, 232 (Bankr. D.Md. 2003)); *cf.* section 329 of the Bankruptcy Code. In this regard, professionals representing statutory fiduciaries, including debtors in possession, are different from professionals employed in other contexts. Determining whether WGB committed malpractice will not only require consideration of the firm's work as measured by bankruptcy law. It will also require consideration of WGB's compliance with the orders authorizing the firm's employment.

Further, both the Application and the Adversary relate to the adjustment of the debtor-creditor relationship. WGB seeks payment from Plaintiff's estate of an administrative expense while Plaintiff would use an estate asset – the claims asserted in the Adversary – to offset or eliminate the liability.

VI. Recommendation

In sum, both the Application and the Adversary implicate the bankruptcy court's equitable authority to oversee estate administration, distribution of estate proceeds and the adjustment of the debtor-creditor relationship. I therefore recommend that the Motion be denied.