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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RALPH URBAN,

Appellant,

DECISION AND ORDER

02-CV-6329L

v.

WILLIAM C. HURLEY, LINDA HAAG, GERALD TUTTLE and COUNTY OF YATES,

Appellees.

Appellant, Ralph Urban ("Urban"), appeals from an Order of Chief Bankruptcy Judge John C. Ninfo, II, of the United States Bankruptcy Court for the Western District of New York, dated April 25, 2002 ("the Decision and Order").[1] The Decision and Order resolved an adversary proceeding that had been transferred to the Western District of New York by United States Bankruptcy Judge Prudence Carter Beatty in the Southern District of New York, by order of August 24, 2000.[2]

Chief Judge Ninfo's Decision and Order together with the four decisions filed in this case in the United States District Court for the Southern District of New York and the Bankruptcy Court

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[1]This decision is not published but is available on the Bankruptcy Court's website at: http://opinions.nywb.uscourts.gov/Get/File-355Urban_Decision.pdf.

[2]This transfer of venue was effected pursuant to 28 U.S.C. § 1412 and Rule 7087 of the Federal Rules of Bankruptcy Procedure.

in that district, which were attached to Chief Judge Ninfo's Decision and Order, admirably set forth the lengthy and tortured history of this seemingly endless litigation.

For present purposes, the dispute has its origins in a contract by Urban to sell approximately 75 acres in Yates County, New York to Linda Haag ("Haag") and Gerald Tuttle ("Tuttle") in the summer of 1988. This property had previously been conveyed to Urban as part of a larger parcel.

Several years later, Yates County commenced an *in rem* foreclosure proceeding against the property that had been deeded to Haag/Tuttle for failure to pay real estate taxes. The property was foreclosed and conveyed by deed in foreclosure to William Hurley ("Hurley") in 1994.

Prior to conveyance of the Haag/Tuttle property in foreclosure, Urban had filed a voluntary Chapter 11 Petition in the Bankruptcy Court in the Southern District of New York. Over the years, there were numerous proceedings and decisions (some of which are referenced above) in the District Court and Bankruptcy Court in the Southern District of New York.

Eventually, by Order of August 24, 2000, Bankruptcy Judge Beatty transferred the adversary proceeding concerning Urban's transfer of the subject property to Haag/Tuttle to the Western District of New York. The issue for resolution was whether Urban retained any interest in that property such that the automatic stay in bankruptcy might have affected subsequent the *in rem* foreclosure action against the property.

Chief Judge Ninfo determined in his Decision and Order that the execution and delivery of the foreclosure deed by Yates County to Hurley did not violate the automatic stay in Urban's Chapter 11 case because Urban had no interest whatsoever in the property foreclosed in the *in rem* proceeding. Therefore, from a bankruptcy code prospective, the foreclosure deed was valid and unavoidable.

DISCUSSION

Motion to Dismiss Appeal.

The first issue is whether this Court should, in its discretion, decline to entertain the appeal.[3] Subsequent to entry of Chief Judge Ninfo's decision on the adversary proceeding on April 25, 2002, and before Urban complied with this Court's requirements for filing his brief on appeal, Bankruptcy Judge Beatty dismissed with prejudice Urban's underlying Chapter 11 case in the Southern District of New York. That dismissal order was entered October 28, 2002.

Although it is generally the case that related proceedings, including adversary proceedings, should be dismissed if the underlying bankruptcy case is terminated, a dismissal is not mandated. The law in the Second Circuit is clear that both the bankruptcy court and the district court have broad discretion to determine whether to retain jurisdiction over an adversary proceeding, even if the underlying bankruptcy proceeding has been terminated. *In re Porges,* 44 F.3d 159, 162 (2d Cir. 1995). The *Porges* court listed four factors that should be considered in determining whether to retain jurisdiction: judicial economy, convenience of the parties, fairness and comity. *Id.* at 163.

In the instant case, all the listed factors suggest that this Court should retain jurisdiction. The issue resolved by Chief Judge Ninfo is an important one that resolves a basic dispute that has prompted endless litigation between Urban and defendant William C. Hurley ("Hurley"). To decline jurisdiction at this point would serve no useful purpose. The bankruptcy court has already expended much time and effort in the matter, and this appeal has now been fully briefed. Judicial economy

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[3]This Court has jurisdiction to decide this appeal, pursuant to 28 U.S.C. § 158(a), which provides that "[a]n appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving."

would not be served by dismissing the case at this point. In fact, such a dismissal would most likely cause the parties to attempt to relitigate this issue elsewhere. Therefore, after considering the factors referred to in *Porges*, I decline to dismiss the appeal and will retain jurisdiction even though the underlying Chapter 11 bankruptcy proceeding has been dismissed.

Merits of Appeal.

Chief Judge Ninfo determined that when Yates County commenced the foreclosure action against the owners of the parcel (Linda Haag and Gerald Tuttle), Urban had no legal or equitable interest in the property. Therefore, the automatic stay occasioned by Urban's bankruptcy filing was not violated by Yates County's prosecution of the *in rem* proceeding.

Chief Judge Ninfo took numerous submissions from the affected parties and conducted an evidentiary hearing on the matter before entering his Decision and Order. Urban declined to appear and participate at the hearing. According to Chief Judge Ninfo's Decision and Order, one of Urban's stated reasons was that he "had made a covenant with God not to litigate in the Western District of New York." (Decision and Order, p. 5). Chief Judge Ninfo, however, made a finding that the real reason for Urban's failure to participate was another tactical decision to delay resolution of the issue. (Decision and Order, p. 7).

Bankruptcy Rule 8013 provides that "[o]n an appeal [from a judgment, order or decree of a bankruptcy judge] the district court ... may affirm, modify, or reverse a bankruptcy court's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witness." In reviewing a decision of the

bankruptcy court, the district court "'must accept the bankruptcy court's findings of fact unless [they are] clearly erroneous,' and will reverse the Bankruptcy Court 'only if [it is] left with the definite and firm conviction that a mistake has been committed.'" *In re Schubert*, 143 B.R. 337, 341 (S.D.N.Y. 1992) (citing *In re Mansville Forest Prods. Corp.*, 896 F.2d 1384, 1388 (2d Cir. 1990). Conclusions of law are reviewed *de novo*. *In re Bonnanzio*, 91 F.3d 296, 300 (2d Cir. 1996); *In re Mansville*, 896 F.2d at 1388 (citing *Brunner v. New York State Higher Educ. Services, Corp.*, 831 F.2d 395, 396 (2d Cir. 1987)).

I have reviewed Chief Judge Ninfo's thorough seventeen-page Decision and Order. I find it persuasive and see no basis whatsoever to modify it or reverse it. Urban has filed numerous pleadings, *pro se*, on the appeal and his recently retained attorney has likewise filed a two-page memorandum in opposition to Yates County's motion to dismiss this appeal. Urban's counsel did not deal with the merits of the appeal in his submission and none of the matters advanced by Urban in his prior *pro se* submissions warrant the modification or reversal of Chief Judge Ninfo's Decision and Order.

The factual findings made by Chief Judge Ninfo, after reviewing the papers and after conducting an evidentiary hearing, may not be set aside unless "clearly erroneous." Certainly there has been no demonstration by Urban that those factual findings were clearly erroneous. In fact, I find that the factual findings are true and accurate and, therefore, Urban has failed to meet the heavy burden of demonstrating that the bankruptcy court's factual findings on the disputed issues are clearly erroneous. In view of that, Chief Judge Ninfo's Decision and Order must be affirmed.

To the extent Chief Judge Ninfo made conclusions of law, those are reviewed *de novo*. I find no basis whatsoever to reverse or modify the conclusions of law found by Chief Judge Ninfo relative to the matters litigated in the adversary proceeding. Neither Urban nor his counsel have raised any meritorious claims of legal errors or improper conclusions of law made by the bankruptcy court.

CONCLUSION

The Decision and Order of United States Chief Bankruptcy Judge John C. Ninfo, II entered April 25, 2002, is AFFIRMED in all respects. I affirm all of the factual findings and conclusions of law determined by Chief Judge Ninfo in the Decision and Order.

The complaint of Ralph Urban, against defendants William C. Hurley, Linda Haag, Gerald Tuttle, and the County of Yates, prosecuted as an adversary proceeding in bankruptcy court, is dismissed.

Defendant Yates County's motion to dismiss the appeal (Dkt. #12) joined in by defendant Hurley (Dkt. #17) is denied.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
May 22, 2003.