

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re

Maurice Bryant,

Case No.: 05-9791-PMG

Debtor.

_____ /
Maurice Bryant,

Plaintiff,

Vs.

Adv.: 09-256-PMG

Phoenix Office Center, Inc., et al.
_____ /

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

This Adversary Proceeding came before the Court for hearing to consider the Motion for Summary Judgment filed by the Defendants, Phoenix Office Center, Inc., David G. Radcliffe and Nancy Radcliffe.

The Plaintiff, Maurice Bryant, commenced this action by filing a Complaint against the Defendants entitled "Petition to Recover Real Property and Sanctions for Violation of Section 362."

Background

On September 4, 2004, Phoenix Office Center, Inc. (Phoenix) filed an action in Duval County Circuit Court (the State Trial Court) to quiet title to real property (the Property) located at 2873 West 15th Street, Jacksonville, Florida, and 2519 St. Claire Street, Jacksonville, Florida, and legally described as:

Lots 11, 12, and the West 3 feet of Lot 13, Block 5, S.J. Melson Addition To Jacksonville, according to plat thereof recorded in Plat Book 5, page 41 of the current public records of Duval County, Florida; together with the North 35 feet of the 15th Street, now closed, lying immediately South thereof.

(Exhibit B to Defendants' Motion for Summary Judgment—Defs.' Ex. B). The action was captioned Phoenix Office Center, Inc. v. Bryan E. Jenkins, et al., Case No.: 16-2004-CA-006068-XXX-MA. (Defs.' Exs. B, C).

Maurice Bryant (Bryant) and several other individuals and entities were named as defendants in the quiet title action. (Defs.' Ex. B). On October 8, 2004, Bryant and other defendants, through their attorney, filed an answer, counterclaim, and cross-claim. (Defs.' Ex. C). On May 9, 2005, the State Trial Court entered a Final Judgment in favor of Phoenix: Phoenix was determined to be the owner of the Property, title was quieted against any claims of Bryant and all other defendants, and the cross-claim of Bryant and the other cross-claimants was dismissed. (Defs.' Ex. D). On May 19, 2005, Bryant filed a Motion for Reconsideration. (Defs.' Ex. A). On July 21, 2005, Bryant, through a different attorney, filed a Second Amended Motion for Reconsideration. A hearing on the motion was set for August 30, 2005. (Defs.' Ex. A).

On September 9, 2005, Bryant filed a petition for relief under Chapter 13 of the United States Bankruptcy Code. Bryant states in his Affidavit in Opposition to Motion for Summary Judgment that the presiding judge in the state court action was also notified of the bankruptcy filing.

On September 22, 2005, the State Trial Court entered an "Order Denying Defendant Maurice Bryant's Second Amended Motion for Reconsideration." (Defs.' Ex. F).

On October 21, 2005, Bryant filed a Notice of Appeal of the May 9, 2005, Final Judgment and the September 22, 2005, Order on the Second Amended Motion for Reconsideration.

On October 27, 2005, Phoenix's attorney wrote a letter to Bryant's attorney, indicating that after the hearing on the motion for reconsideration he had received notice of the bankruptcy filing and after that he had received the Notice of Appeal, and inquired if the appeal would proceed because the bankruptcy had been filed. (Exhibit E to Bryant's Affidavit in Opposition to Motion for Summary Judgment—Bryant's Ex. E). No response from Bryant's attorney is in the record, but the appeal proceeded, and on January 9, 2007, the First District Court of Appeals affirmed the trial court's rulings. (Defs.' Ex. H).

On June 1, 2009, Bryant filed the present complaint entitled "Petition to Recover Real Property and Sanctions for Violation of § 362." In the Complaint, Bryant requests that the Court enter "an Order that reestablishes possession in the debtor, cancels all orders subsequent to the September 9, 2005, Bankruptcy file date, damages against all Defendants, to include punitive damages and sanctions for violation of Section 362, and attorney fees for this action." Additionally, in the Complaint the "Plaintiff seeks a determination of discharge ability of its debt pursuant to 11 U.S.C. § 523 (a) (4)."

Defendants' Motion for Summary Judgment

Defendants' Motion for Summary Judgment seeks a determination that there is no genuine issue as to any material fact regarding the complaint that could result in a judgment against them, and that they are entitled to judgment as a matter of law.

Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding through Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

As the party moving for summary judgment, the Defendants have the burden of demonstrating that there is no genuine issue as to any material fact. The non-moving party is to be given the benefit of the doubt on all credibility issues and the benefit of any inferences that reasonably might be inferred from the evidence. In re Diagnostic Instrument Group, Inc., 283 B.R. 87, 94 (Bankr. M.D. Fla. 2002), *citing* Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986).

Discussion

The Court finds that there are no genuine issues of material fact, and that Defendants' Motion for Summary Judgment should be granted as a matter of law.

In Defendants' Motion for Summary Judgment, the Defendants address the issues raised by Bryant's complaint: (A) sanctions for violation of the automatic stay; (B) turnover of the Property; and (C) a determination of dischargeability.

A. Violation of the Automatic Stay

Bryant alleges in his complaint that "[t]he Defendants have continually attempted through trick, fraud and scheme to deprive the debtor of use, control and ownership of the 2873 West 15th Street, Jacksonville, Florida property" (Complaint ¶7) and that "[t]he Defendants in violation of Section 362 have obtained several orders removing Debtor from the property and cancelling [sic] all title in favor of Debtor." (Complaint ¶8).

Section 362 of the Bankruptcy Code provides in pertinent part:

11 USC § 362 Automatic Stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of---

. . . .

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

. . .

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.

. . .

(h)¹ An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

The Eleventh Circuit has held that a willful violation occurs when the creditor: (1) knew that the automatic stay was invoked; and (2) intended the actions that violated the stay. Jove Engineering v. Internal Revenue Service, 92 F.3d 1539, 1555 (11th Cir. 1996). A willful violation does not require a specific intent to violate the automatic stay, but only an intent to commit an act with knowledge of the stay. Id. Actions taken in violation of the automatic stay are void and without effect. In re Albany Partners, Ltd., 749 F.2d 670, 675 (11th Cir. 1984).

The record shows that any acts by the Defendants to obtain possession of the Property were taken well in advance of the filing of Bryant's bankruptcy petition. Phoenix entered into possession of the Property in July, 2004, and maintained possession of the Property since that time. (Defs.' Ex. B). Phoenix brought an action to quiet title to the Property, and on May 9, 2005, the State Trial Court entered the Final Judgment quieting title and determining Phoenix to be the owner of the Property. (Defs.' Ex. D). The Debtor pursued a rehearing of the State Trial Court order and the State

¹ Bryant filed his petition prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) that took effect on October 17, 2005. Accordingly, §362(h) is the applicable section under the Bankruptcy Code prior to the enactment of BAPCPA.

Trial Court heard the motion for rehearing before the Debtor filed his bankruptcy petition. (Defs.' Ex. A).

After the hearing on Bryant's Second Amended Motion for Rehearing, Bryant filed his bankruptcy petition. The State Trial Court subsequently entered its order denying the motion for rehearing, and Bryant filed a Notice of Appeal. Following the filing of the Notice of Appeal, the attorney for Phoenix wrote the attorney for Bryant, acknowledging the filing of the bankruptcy petition, and inquiring if the appeal would be pursued. (Bryant's Ex. E). It is apparent that Bryant pursued the appeal, since on January 9, 2007, the State Appellate Court entered orders affirming the State Trial Court decisions. (Defs.' Ex. H).

Phoenix was in possession and control of the Property prior to the filing of the bankruptcy petition. The State Trial Court determined that Phoenix was the owner of the Property prior to the filing of the petition, and entered its order quieting title prior to the petition.

The judicial proceeding involving the Property continued after the petition was filed, however. After the hearing on Bryant's Motion for Rehearing, Bryant filed his bankruptcy petition. The State Trial Court then entered its order denying Bryant's motion for rehearing. Bryant then appealed the orders of the State Trial Court, Phoenix inquired if the appeal would be pursued since the bankruptcy had been filed, the appeal was pursued, and the State Appellate Court entered its orders affirming the State Trial Court orders. Although none of the action in the state courts following the filing of the petition was initiated by Phoenix, the state court action continued.

Although the automatic stay applies to the continuation of judicial proceedings, courts have recognized equitable exceptions in certain circumstances. For example:

. . . [To] permit the automatic stay provision to be used as a trump card played after an unfavorable result was reached in state court, would be inconsistent with the underlying purpose of the automatic stay which is to give a debtor 'a breathing spell from his creditors.' In re Downing, 141 B.R. 748, 750 (Bankr. N.D. Ok. 1992).

In this case, the record does not indicate that Phoenix initiated any action against Bryant after the filing of his petition. The Final Judgment in Phoenix's favor, which quieted title to Bryant's claims against the Property, was entered on May 9, 2005, four months prior to the filing of Bryant's bankruptcy petition. The orders entered post-petition by the state courts on September 25, 2005, and January 9, 2005, were in response to Bryant's motion for reconsideration and his subsequent appeal of the trial court's rulings. Phoenix inquired if Bryant intended to pursue the action since the bankruptcy was filed. Because Bryant initiated and actively litigated the post-petition state court action, it would be inequitable for this Court to void the post-petition orders entered by the state court simply because Bryant is not satisfied with the result.

The record also shows that neither David nor Nancy Radcliffe was a party to the state court proceedings. Accordingly, the Radcliffes could not have committed a stay violation against Bryant by continuing the litigation because they were not parties in the state court litigation.

For the reasons discussed above, the Court should not set aside the orders entered post petition by the State Courts. Accordingly, the Defendants are entitled to summary judgment regarding the relief that Bryant seeks pursuant to § 362.

B. Turnover of property of the estate

In the Complaint, Bryant requests that the Court enter "an Order that reestablishes possession in the debtor"

As discussed, Phoenix was in possession and control of the Property prior to the filing of the bankruptcy petition. The State Trial Court determined that Phoenix was the owner of the Property prior to the filing of the petition, and entered its order quieting title prior to the petition. On appeal, the order was affirmed.

i. Res Judicata

The purpose of the doctrine of res judicata is "to prevent litigation of matters of law and fact previously adjudicated; and to 'promote the conservation of judicial resources by preventing needless litigation.'" Federal Trade Commission v. Wilcox, 926 F.Supp. 1091, 1100-01 (S.D. Fla. 1995)(quoting Refined Sugars, Inc. v. Southern Commodity Corp., 709 F.Supp. 1117, 1120 (S.D. Fla. 1988)).

"*Res judicata*" refers to the "preclusive effect of a judgment in foreclosing relitigation of matters that were litigated or could have been litigated in an earlier suit. *I.A. Durbin, Inc. v. Jefferson National Bank*, 793 F.2d 1541, 1549 (11th Cir. 1986). "When [*res judicata* or] claim preclusion does not apply to bar an entire claim or set of claims, the doctrine of collateral estoppel, or issue preclusion, may still prevent the relitigation of particular issues which were actually litigated and decided in a prior suit." *Citibank N.A. Data Lease Financial Corp.*, 904 F.2d 1498, 1501 (11th Cir. 1990).

FTC v. Wilcox, 926 F.Supp. at 1101.

For an action to be barred under the doctrine of res judicata, the Eleventh Circuit Court of Appeals has held that four elements must be present:

First, the prior judgment must be valid in that it was rendered by a court of competent jurisdiction and in accordance with the requirements of due process. Second, the judgment must be final and on the merits. Third, there must be identity of both parties or their privies. Fourth, the later proceeding must involve the same cause of action as involved in the earlier proceeding.

In re Atlanta Retail, Inc., 456 F.3d 1277, 1285 (11th Cir. 2006)(quoting In re Justice Oaks II, 898 F.2d 1544, 1550 (11th Cir. 1990)).

ii. Rooker-Feldman

According to the Rooker-Feldman doctrine, "federal district courts lack subject matter jurisdiction to review the judgments of a state court." Romagosa v. Thomas, 2006 WL 2085461, at 4 (M.D. Fla. July 25, 2006). "Rooker-Feldman provides that federal courts, other than the United States Supreme Court, do not have jurisdiction to review the final judgments of state courts." Amos

v. Glynn County Board of Tax Assessors, 347 F.3d 1249, 1266 n.11 (11th Cir. 2003). The doctrine "is a set of legal principles grounded in federalism and res judicata which serves to prevent unsuccessful state court litigants from re-litigating state court cases in federal district court." Romagosa, 2006 WL 2085461, at 4.

The Rooker-Feldman doctrine ... is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005).

Four criteria must be satisfied for federal jurisdiction to be barred under the Rooker-Feldman doctrine: "(1) the party in federal court is the same as the party in state court; (2) the prior state-court ruling was a final or conclusive judgment on the merits; (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state-court proceeding; and (4) the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment." Morris v. Wroble, 206 Fed. Appx. 915, 917-18 (11th Cir. 2006)(citing Amos v. Glynn County Board of Tax Assessors, 347 F.3d 1249, 1266 (11th Cir. 2003).

iii. Application to the facts in the present proceeding

Bryant seeks to be awarded possession of the Property, which is the same issue the state court decided when it entered Final Judgment in favor of Phoenix and quieted Bryant's claims to the Property.

(a) Phoenix

The doctrines of both res judicata and Rooker Feldman are applicable to the state court's Final Judgment entered in favor of Defendant Phoenix. Bryant and Phoenix were both parties in the state court action, and the State Trial Court's Final Judgment, affirmed by the State Appellate

Court, was a determination on the merits that quieted title to any claims Bryant may have had to the Property. Accordingly, any claims Bryant raises to the Property against Phoenix are barred by the doctrines of res judicata and Rooker Feldman.

(b) David and Nancy Radcliffe

To the extent that Bryant seeks title or turnover of the Property from the Radcliffes, the request should be denied because the Property is owned by Phoenix. The Radcliffes do not have an interest in the Property to turnover to Bryant.

C. Determination of Dischargeability

In the Complaint, the "Plaintiff seeks a determination of discharge ability of its debt pursuant to 11 U.S.C. § 523 (a) (4)." (Complaint, ¶ 1).

11 U.S.C. § 523(a)(4) provides:

11 U.S.C. § 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

. . .

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

Pursuant to this section of the bankruptcy code, an amount owing by a debtor to a creditor may be determined to be nondischargeable if the debt is for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

Bryant does not schedule a debt to Phoenix or to the Radcliffes that would be subject to this determination (Defs.' Ex. I), and the Defendants do not claim that there is such a debt. Additionally, according to the record in Bryant's bankruptcy case, no debt to the Radcliffes is contained in his confirmed First Amended Chapter 13 Plan (Doc. Nos. 44 and 60, main case).

Accordingly, it does not appear that there is a debt from Bryant to the Defendants that would be subject to a determination pursuant to 11 U.S.C. § 523(a)(4).

Conclusion

The Defendants Motion for Summary Judgment should be granted.

First, the Final Judgment determining that Phoenix Office Systems, Inc. owned the property at issue was entered before Bryant filed his petition in bankruptcy, and it was Bryant who initiated and actively litigated the post-petition litigation. Therefore, based on equitable considerations, the Court will not set aside the post-petition orders entered by the state court, and will not impose monetary sanctions against the Defendants.

Second, the doctrines of res judicata and Rooker Feldman bar Bryant from re-litigating the Final Judgment entered by the state court in favor of Phoenix. The property is owned by Phoenix and is not property of Bryant's bankruptcy estate.

Finally, Bryant lists no amounts owing to Phoenix or the Radcliffes that could be determined to be nondischargeable.

Accordingly,

IT IS ORDERED that the Defendants' Motion for Summary Judgment is granted. The Court will enter a separate Judgment in favor of the Defendants.

DATED this 10 day of February, 2010.

BY THE COURT

/s/ Paul M. Glenn

PAUL M. GLENN
Chief United States Bankruptcy Judge