

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Opinions

Will this opinion be published? No

Bankruptcy Caption: In Re Robert G. Racky

Bankruptcy No.: 97 B 06064

Adversary Caption: Racky, et al. v. North Community Bank

Adversary No.: 00 A 00890

Date of Issuance: October 2, 2001

Judge: Carol A. Doyle

Appearance of Counsel:

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:)	
)	
ROBERT G. RACKY,)	Case No. 97 B 06064
)	
Debtor.)	
_____)	
)	
ROBERT G. RACKY, T. LAMB,)	
INC. and CHICAGO SPORTS)	
MANAGEMENT, INC.,)	Adversary No. 00 A 890
)	
Plaintiffs,)	
)	
v.)	
)	
NORTH COMMUNITY BANK,)	
)	
Defendant.)	

MEMORANDUM OPINION

This matter is before the court on defendant North Community Bank’s (“NCB”) motion to dismiss the complaint in this adversary proceeding. The plaintiffs, Robert G. Racky, T. Lamb, Inc., d/b/a/ the Lakeview Baseball Club (the “Club”) and Chicago Sports Management, Inc. (“CSM”), filed a two-count adversary complaint. The first count seeks a declaratory judgment that the fraudulent conveyance claim NCB is pursuing in state court against plaintiffs was previously released by a settlement approved by this court. The second count seeks injunctive relief for NCB’s alleged contempt of the settlement order. During oral argument on NCB’s motion to dismiss, the plaintiffs conceded that the court does not have jurisdiction over Count I. The court will therefore address only

the contempt claim in Count II. As discussed more fully below, the court dismisses Count II of the complaint for failure to state a claim for contempt of court.

In addition, the plaintiffs recently filed a Motion for Leave to File First Amended Complaint. For the reasons stated below, this motion is denied.

BACKGROUND

Racky and Gilbert Liss are the beneficiaries of an Illinois land trust that holds legal title to real property at 3633 North Sheffield Avenue (“Sheffield Property”). They created a land trust (“Sheffield Trust”) in 1988 that acquired the Sheffield Property. Racky and Liss also created T. Lamb, Inc., an Illinois not-for-profit corporation doing business as the Lakeview Baseball Club, to lease the Sheffield Property and operate a private club. In April 1989, Racky on behalf of the Club and Liss on behalf of the Sheffield Trust executed a long-term lease for the Sheffield Property. In October 1989, the Sheffield Trust and Racky entered into a mortgage loan transaction with NCB in which NCB obtained a mortgage on the Sheffield Property.

In December 1992, NCB filed a complaint in the Circuit Court of Cook County seeking to foreclose its mortgage on the Sheffield Property. On August 22, 1994, the Circuit Court entered summary judgment in favor of the Club, determining that its interest under the lease was senior to NCB’s interest in the Sheffield Property. NCB did not appeal that decision. On June 25, 1995, the Circuit Court entered judgment in favor of Racky and the Sheffield Trust and against NCB on NCB’s foreclosure claim. NCB appealed the June 25, 1995 Circuit Court judgment, and the Illinois appellate court reversed and remanded the foreclosure case to the Circuit Court.

Meanwhile, Racky filed for relief under Chapter 7 of the Bankruptcy Code in 1997. In February 1998, NCB obtained relief from the automatic stay to pursue its remedies under the mortgage. In June 1999, NCB filed a second amended complaint in the foreclosure action. Count III of the second amended complaint in that action alleges that the Club's lease was not an arms length transaction and that its terms constitute a fraud on NCB. It also alleges that Racky and Liss made false statements to NCB to induce NCB to make the loan.

After NCB filed its fraudulent conveyance claims in the state court action, Racky, the Club, CSM and others entered into a settlement agreement with the trustee of the bankruptcy estate that was approved by this court. NCB initially objected to the entry of an order based on the settlement agreement but eventually consented to its entry. NCB was not a party to the agreement. The order dated November 17, 1999 ("Settlement Order") directed the trustee to transfer to Racky all of the estate's right, title and interest in the Sheffield Property. It also provided that the property is conveyed free and clear of all interests except the mortgage and collateral assignment of NCB, among other things.

After the Settlement Order was approved, Racky, the Club and NCB continued to litigate in state court. The Club brought a motion to dismiss the fraudulent conveyance claims in state court. The motion was denied by the state court in an order dated March 17, 2000. The Club appealed that order on an interlocutory basis.

In response to questions from the court during oral argument, counsel for the Club acknowledged that the defendants in the state court action did not raise the Settlement Order as a basis for dismissing NCB's fraudulent conveyance claims. Thus, the defendants did not argue in the state

court that NCB's fraudulent conveyance claims had been released by the trustee in the Settlement Order.

After losing in state court on the motion to dismiss the fraudulent conveyance claims, Racky, the Club and CSM filed this two-count adversary proceeding. The first count seeks a judgment declaring that NCB's state court cause of action for fraudulent conveyance was compromised and released by the trustee in the settlement agreement. The second count seeks an order finding that NCB is in contempt of the Settlement Order for prosecuting the fraudulent conveyance portion of its state court action. In essence, both counts seek an order declaring that the Settlement Order released the fraudulent conveyance claims NCB is pursuing in state court.

NCB has moved to dismiss the adversary complaint on the grounds that this court lacks subject matter jurisdiction to hear the matter and that Racky has failed to state a claim. As noted above, during oral argument, the plaintiffs conceded that the court lacks jurisdiction to hear Count I of the adversary. With respect to Count II, the court finds that the plaintiffs have failed to state a claim for contempt of court.

DISCUSSION

A. Count II of the Adversary Complaint - Contempt

The plaintiffs allege that NCB is in contempt of the Settlement Order. This court has jurisdiction to determine if a party is in contempt of its order. In re Alpern, 191 B.R. 107, 111 (N.D. Ill. 1995). As noted above, however, NCB is not a party to the Settlement Order. NCB participated in the hearing on the motion to approve the Settlement Order, and it is bound by whatever legal effect

the order has on it. However, the Settlement Order does not direct NCB to do or not to do anything. It merely contains the agreements between the trustee and the various settling parties.

To find civil contempt, a court must find that the offending party “knowingly violated a definite and specific court order.” In re Andrus, 184 B.R. 311, 315 (Bankr. N.D. Ill. 1995) (quoting In re Johnson, 148 B.R. 532, 538 (N.D. Ill. 1992)). However, a party can be held in contempt only for “behavior clearly prohibited by a court order ‘within its four corners.’” D. Patrick, Inc. v. Ford Motor Co., 8 F.3d 455, 460 (7th Cir. 1993) (quoting United States v. ITT Cont’l Baking Co., 420 U.S. 223, 237 (1975)). “It must be shown that there exists an enforceable order that is clear and specific which unambiguously commands such party to perform . . . in accordance with the order.” Barry Russell, Bankruptcy Evidence Manual § 301.37 (2001 ed.) (citing In re Berryhill, 127 B.R. 427, 429 (Bankr. N.D. Ind. 1991)). The plaintiffs fail to allege any cognizable contempt claim because they do not and cannot allege that NCB was ordered to do or not to do anything in the Settlement Order and that NCB violated that order.

The plaintiffs have argued orally that under their interpretation of the Settlement Order the fraudulent conveyance claims of NCB were settled, and therefore it is contempt of the Settlement Order for NCB to pursue them. However, plaintiffs really seek to have this court decide the res judicata effect of the Settlement Order in the state court case. That is a different question from contempt, and one over which this court does not have jurisdiction. Plaintiffs have acknowledged as

much by agreeing that the court has no jurisdiction over Count I, which in effect asked for a declaratory judgment regarding the res judicata effect of the Settlement Order in the state court case.¹

The plaintiffs also cite Fogel v. Zell, 221 F.3d 955 (7th Cir. 2000), as authority for the court to enjoin parties who violate a settlement approved by the court. However, the Settlement Order in this case contains no injunction against NCB, whether it could have or not. Therefore, NCB's pursuit of its fraudulent conveyance claims in state court is not in contempt of the Settlement Order. Count II is therefore dismissed.

¹The court has jurisdiction only if this is a core proceeding under 28 U.S.C. § 157(b)(2) or a related proceeding under 28 U.S.C. § 157(c). Count I does not fall within any of the enumerated core proceedings in § 157(b)(2). It also is not a non-enumerated core proceeding, which must “invoke[] a substantive right provided by title 11” or be “a proceeding that, by its nature, could arise only in the context of a bankruptcy case.” Barnett v. Stern, 909 F.2d 973, 981 (7th Cir. 1990) (quoting In re Wood, 825 F.3d 90, 97 (5th Cir. 1987)). Here, the plaintiffs are not invoking a substantive right provided by Title 11, and this is not a proceeding that could arise only in the context of a bankruptcy case. The plaintiffs are asking the court to interpret a settlement agreement; they are not invoking any substantive right under Title 11. This issue could have and should have been raised in the state court. Therefore, obviously, this proceeding could arise in the context of a non-bankruptcy proceeding. The state court is the proper court to determine the res judicata effect of another court's order on a case pending before it. Therefore, Count I does not fall within the non-enumerated core jurisdiction of the court.

Count I also is not a related proceeding under 28 U.S.C. § 157(c). The Seventh Circuit has made clear that a bankruptcy court does not have jurisdiction to interpret or “clarify” even its own orders when the interpretation will have no impact on the administration of the estate. E.g., In re FedPak Sys., Inc., 80 F.3d 207 (7th Cir. 1996); In re Edwards, 962 F.2d 641 (7th Cir. 1992); In re Xonics, Inc., 813 F.2d 127 (7th Cir. 1987). In this case, the trustee sold the estate's entire interest in this property to the debtor. Whether the plaintiffs or NCB prevail will not affect the estate in any way. Therefore, this court does not have jurisdiction over Count I as a related proceeding.

B. Plaintiff's Motion for Leave to File First Amended Complaint

During oral argument with the court regarding the jurisdiction issue, the court expressed its concern that it lacked jurisdiction to interpret the Settlement Order because the estate no longer had any interest in the dispute. The court set September 12, 2001 as a ruling date on the jurisdiction issue. The plaintiffs then noticed their "Motion for Leave to File First Amended Complaint Instanter" for the September 12, 2001 ruling date. In that motion, the plaintiffs seek to add a third count to their complaint, entitled "Count III - Rescission and Restitution (Against the Trustee)." The trustee is the defendant in this proposed count, not NCB. Plaintiffs allege that one part of the consideration the trustee provided in the settlement was his release of NCB's fraudulent transfer claims. They allege that "[s]olely in the event that this Court ultimately determines that the Settlement did not effect a release of the Estate's fraudulent transfer claims," then there was a mutual mistake between the plaintiffs and the trustee and the Settlement Order should be rescinded.

First, as the court noted when the motion was presented, this proposed amendment seems to be an attempt to create some hypothetical effect on the estate that might confer jurisdiction on the court to interpret the Settlement Order. However, whatever the intent of the proposed amendment, the court denies the motion to amend. Counts I and II of the Adversary are dismissed as discussed above. Plaintiffs agreed that there is no jurisdiction over Count I, and Count II is dismissed for failure to state a claim for contempt, not lack of jurisdiction. Therefore, the proposed amendment to the complaint would have no impact on the dismissal of either count. In addition, both Counts I and II were against NCB, not the trustee. There is no reason to allow an amendment of the complaint in this case to bring a completely different claim against a completely different party in a proceeding that is otherwise being

dismissed. Finally, as discussed above, this court will not be rendering any interpretation of the Settlement Order that could form the predicate for the cause of action alleged in Count III. Even if the Settlement Order is interpreted in the future by a court to allow NCB to proceed on its fraudulent conveyance claims and plaintiffs believe that would support a colorable claim of any kind in this court, any such claim is not ripe for adjudication at this time. See Marchi v. Bd. of Coop. Educ. Servs. of Albany, 173 F.3d 469, 479 (2nd Cir. 1999) (affirming denial of motion for leave to amend because proposed claim was not ripe); see also Hinrichs v. Whitburn, 975 F.2d 1329, 1333 (7th Cir. 1992) (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 149 (1967)).

For all of these reasons, the motion to dismiss Counts I and II of the adversary complaint is granted, and the motion for leave to file a first amended complaint is denied.

ENTERED:

Date: October 2, 2001

CAROL A. DOYLE
United States Bankruptcy Judge