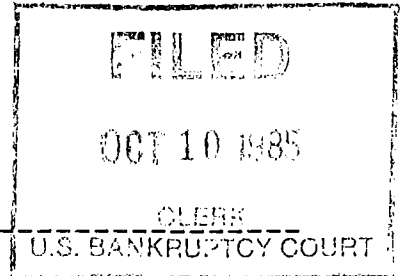


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

JAMES B. LASZEWSKI  
JANITH G. LASZEWSKI

WF7-81-01502

Debtors.

FIDELITY & DEPOSIT COMPANY  
OF MARYLAND, a Foreign Corporation

Plaintiff,

Adversary Number:

v.

85-0137-7

JAMES B. LASZEWSKI and  
JANITH G. LASZEWSKI,

Defendants.

OPINION AND ORDER GRANTING MOTION FOR ABSTENTION

Defendants James B. and Janith G. Laszewski have moved for abstention of this proceeding under 11 U.S.C. § 1334(c)(1) or, in the alternative, a stay of this proceeding. Plaintiff Fidelity & Deposit Company of Maryland initiated this adversary proceeding on April 30, 1985. It seeks judgment for \$34,000 and a determination that this debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(2). Plaintiff claims it is entitled to \$34,000 under the terms of a supplementary stipulation entered into by the parties on February 23, 1982.

A pre-trial conference in this matter was held on July 17, 1985. Plaintiff appeared by Attorney Rhea A. Myers and Defendants by Attorney Jerold E. Aubry. Both parties have submitted briefs on the motion for abstention or stay.

This entire dispute first began in 1981 when defendants filed a Petition for Reorganization under Chapter 11 of the Bankruptcy Code. At the same time M & S Electric Corporation, whose president was Mr. Laszewski, also filed for reorganization. Plaintiff was the bonding agent for M & S Electric on its construction projects. Based on the stipulation that it entered into with defendants, plaintiff continued to fund M & S construction projects and did not object to defendants' Plan of Reorganization which was approved on May 27, 1982.

In July, 1983, plaintiff filed an action in Wisconsin Circuit Court asserting that defendants had defaulted under the supplementary stipulation. That action is essentially identical to that portion of the present adversary proceeding which seeks \$34,000. Defendants, in their state court answer, denied plaintiff's claim and asserted a counterclaim alleging alteration of instrument and breach of contract. This lawsuit is pending.

Defendants request an abstention pursuant to 28 U.S.C. § 1334(c)(1) to allow this state court action to be completed. Sec. 1334(c)(1), enacted by the Bankruptcy Amendments and Federal Judgeship Act of 1984, allows the court to abstain from hearing a proceeding in the interest of justice or comity with state courts

or respect for state law. Such abstention is discretionary with the court.

In In re Ghen, 45 B.R. 780, 781 (Bankr.E.D.PA 1985), the court pointed out that the pendency of a state court action may constitute grounds for abstention in order to advance the interests of judicial administration, comprehensive disposition of the litigation, conservation of judicial resources and fairness to the parties. The court concluded that abstention was proper where its subject matter was identical to that of the pending state court action, and its outcome would have no bearing on the administration of the estate. Id. at 782.

This court concludes that abstention is warranted. Whether plaintiff succeeds in his claim for \$34,000 will affect the outcome of this bankruptcy estate. This, alone, does not preclude abstention. Plaintiff itself initiated the state court action over two years ago. At that time it was obviously of the opinion that whether defendants owed it \$34,000 was an issue of state law for the state court. Interpretation of the contract between the parties, and whether it has been breached, is a matter of state law. The fact that the contract was entered into because of a bankruptcy proceeding does not make its interpretation a matter of federal law. Since that case has been pending for over two years it is in all likelihood closer to resolution than this adversary proceeding which has barely advanced beyond the pleading stage.

Contrary to plaintiff's assertion, judicial economy does not dictate that the court decide this entire matter. Before this court can determine whether a particular debt is dischargeable, a debt must actually be established. The issue of discharge cannot be decided first, to possibly make further determination unnecessary, as plaintiff suggests. How can the court decide whether there has been fraud or false representation in relation to a debt that has not been demonstrated and may not exist? This court or the state court will have to address the issues which have arisen under the parties' agreement. By deferring to the pending state court action judicial duplication will be avoided.

Abstention as to the claims under the supplementary stipulation will be fair to both parties. Plaintiff initially chose the state court forum and has suggested no reason why it would be unfair to allow its state court litigation to continue.

Based on the fact that the state court is in a better position to quickly resolve the state law issues involved in this matter and the fact that it would be fair to allow the matter to continue where it was commenced by plaintiff, the court shall abstain from plaintiff's claim pursuant to 28 U.S.C. § 1334(c)(1). If the state court determines that defendants are indebted to plaintiff based on its claim, this court shall then consider whether such debt is nondischargeable.

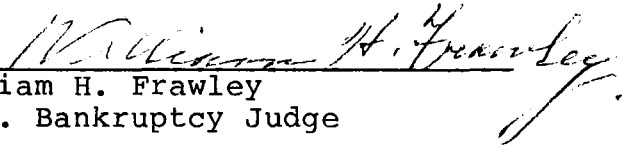
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT pursuant to 28 U.S.C. § 1334(c)(1) this court shall abstain from hearing plaintiff's claim for \$34,000 under the parties' supplementary stipulation.

Dated: October 10, 1985.

BY THE COURT:

  
William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney Rhea Myers  
Attorney Jerold E. Aubry