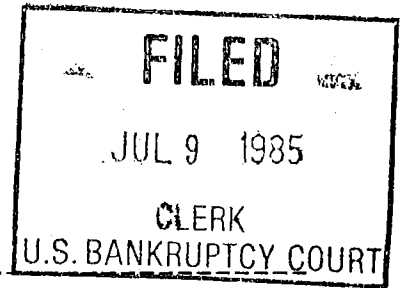


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

PAUL RAUTER,

EF11-84-02060

Debtor.

WILLIAM J. LAUFENBERG and  
LINDA J. LAUFENBERG,

Plaintiffs,

Adversary Number:

v.

85-084-11

PAUL RAUTER,

Defendant.

OPINION AND ORDER REFERRING  
MATTER TO THE DISTRICT COURT

The present adversary proceeding arises from a Petition for Reorganization filed by Defendant Paul Rauter under Chapter 11 of the U. S. Bankruptcy Code, 11 U.S.C. § 101 et seq. Plaintiffs William J. and Linda J. Laufenberg have filed a Complaint objecting to the discharge of a debt allegedly owed them by Defendant. They seek judgment under various subsections of secs. 523(a) and 727(a) of the Code. The Plaintiffs also request such other relief as the Court deems just and appropriate.

According to the Complaint, Plaintiffs are farmers engaged in the dairy farm and heifer raising business. Defendant's primary occupation is claimed to involve the purchase and sale of

cattle. The Complaint alleges that in early 1983 the parties entered into an agreement which provided that Plaintiffs would purchase and sell cattle with the Defendant. Among other things, the Complaint asserts that through misrepresentation Plaintiffs were induced to part with \$169,300 worth of cash and cattle. The Defendant is claimed to have intentionally and improperly converted the cattle and money to his own use. Defendant has demanded a jury trial of this action. Plaintiffs oppose this jury trial demand.

Before addressing the question of whether Defendant is entitled to a jury trial in this matter, the Court must address the jurisdictional issue of whether this case is a core or non-core proceeding. 28 U.S.C. § 157(3). If the Court determines that this is a core proceeding which arises under a provision of Title 11 or arises in a case under Title 11, it may hear the matter and enter an appropriate order and judgment, subject to review. 28 U.S.C. § 157(b)(1). Alternatively, if the Court determines that this is a non-core proceeding that is otherwise related to a case under Title 11, it may hear the matter but shall submit proposed findings of fact and conclusions of law to the District Court which shall enter a final order or judgment. 28 U.S.C. § 157(c)(1).

Bankruptcy courts in other jurisdictions have determined that actions similar to the present one are core proceedings over which the courts had jurisdiction to enter a final judgment. See In re Duo Metal & Iron Works, Inc., 45 B.R. 139 (Bankr.E.D.

Pa. 1984); In re Criswell, 44 B.R. 95 (Bankr.E.D.Va. 1984). However, it has been pointed out that the court in Criswell, supra, failed to consider whether the sec. 157(b)(1) requirement of "arising under" or "arising in" was also satisfied. Norton Bankr. L & Prac. Monograph 1985 - No. 1, p. 104. The Court in Duo Metal, supra, also neglected to consider this requirement.

28 U.S.C. § 157(2) sets forth, without limitation, several matters which constitute core proceedings. The essence of Plaintiffs' Complaint is a claim against the bankruptcy estate and an objection to any discharge of Defendant's alleged debt to Plaintiffs.<sup>1</sup> Thus, the case qualifies as a core proceeding under 11 U.S.C. § 157(2)(B) and (J).

Determining whether this matter arises under a provision of Title 11 or arises in a case under Title 11 is a more difficult matter. Given the language of sec. 157, it might be argued that every claim against an estate satisfies the requirement of 11 U.S.C. § 157(b)(1). Plaintiffs' claim here arises in a case under Title 11, strictly speaking. Nevertheless, any decision relying on this fact to satisfy the requirements of sec. 157, as to allow the Court to enter a final judgment, would most cer-

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<sup>1</sup> The Complaint in this matter seeks a denial of discharge for the debt allegedly due Plaintiffs from Defendant and requests such other relief as the Court deems just and appropriate. If a bankruptcy court determines that a debt is nondischargeable, it should as a court of equity grant full relief. See In re Shapiro, 22 B.R. 685, at 687 (Bankr.E.D.Pa. 1982); In re Fasulo, 25 B.R. 583, at 585 (Bankr.D.Conn. 1982). Therefore, given proper proof, this Court would not only deny discharge but would decide the amount of the debt based on damages and would render judgment for that amount.

tainly run afoul of the Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982). The Court's plurality concluded that the Bankruptcy Act of 1978 had violated the constitutional doctrine of separation of powers by vesting "the essential attributes of the judicial power" from the Article III District Court to the Bankruptcy Court, a non-Article III adjunct. Id. at 87. The causes of action in Northern Pipeline for breach of contract and misrepresentation are traditional state law claims.

The claims involved in this case fall squarely within the ambit of Northern Pipeline, supra. Plaintiffs are basically alleging breach of contract and misrepresentation. The mandate of Northern Pipeline is that a non-Article III Bankruptcy Court shall not adjudicate these types of state law causes of action. Any decision that sec. 157(b)(1) is satisfied by the circumstances of this case would be unconstitutional. At this juncture it is not necessary to delineate what would satisfy the requirements of sec. 157(b)(1). It is sufficient to conclude that the strictly state-law based claims involved in this case cannot constitutionally be finally decided by this Court and, therefore, do not satisfy sec. 157(b)(1) under either option.<sup>2</sup>

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<sup>2</sup> The Court's conclusion that neither of the alternative requirements of 28 U.S.C. § 157(b)(1) has been satisfied is consistent with the Court's decision in Mohawk Industries v. Robinson Industries, 46 B.R. 464 (D.Mass. 1985), and the analysis of Hon. William L. Norton, Jr. and Richard Lieb in an article on the 1984 Amendments. See Norton Bankr. L & Prac. Monograph 1985 - No. 1, supra at 109.

This conclusion should not be viewed as a decision that all cases involving state law issues are beyond this Court's power to finally adjudicate. Sec. 157(b)(3) provides that a proceeding should not be determined to be a non-core proceeding solely on the basis that its resolution may be affected by state law. Certainly, there are many cases involving such matters as lien avoidance or exemption claims which may be vitally affected by state law. Nevertheless, these cases would only arise under the Bankruptcy Code and have no existence independent of it. They may be fully adjudicated by this Court.

As noted previously, 28 U.S.C. § 157(c)(1) allows a Bankruptcy Court to hear a non-core proceeding that is otherwise related to a Title 11 case and to submit proposed findings of fact and conclusions of law to the District Court. The fact that the Court has already found this action to be a core proceeding, but not in satisfaction of sec. 157(b)(1), should not be viewed as foreclosing the option of sec. 157(c)(1). An interpretation of sec. 157(c)(1) in light of Northern Pipeline, supra, leads to the conclusion that this is such a "related to" case referred to in that section. The term "non-core" as used in sec. 157(c)(1) must be interpreted as encompassing cases which partially but not fully satisfy the requirements of sec. 157(b). Since the 1984 Amendments were largely a reaction to Northern Pipeline, supra, it is logical to assume that sec. 157(c)(1) was meant by Congress to include the type of state-law claims involved both there and in the present case. Those types of claims that are otherwise

related to a Title 11 case are often most expeditiously addressed by the Bankruptcy Court since they underly Code issues that are present. The state-law claims here involve the Debtor directly, and require much the same factual and legal consideration and analysis as the discharge issues under the Code. These claims also have a potential effect on the bankruptcy estate. Based on these facts, the Court determines that the underlying claims in this action are otherwise related to the Title 11 case involved here.

Until this point, the Court has solely addressed Plaintiffs' underlying state-law claims. Under the same test employed earlier, it is determined that the dischargeability proceeding itself is a core proceeding under sec. 157(b)(2)(I). It is an action which arises exclusively under the Code. Therefore, under sec. 157(b)(1), the Court is empowered to hear this matter and render a judgment.

The mixed result of the Court's determination is that it is empowered to hear both the underlying state claims and the claims of nondischargeability. The Court may only finally adjudicate the latter claims and must submit proposed findings of fact and conclusions of law on the former.

28 U.S.C. § 157(c)(1) provides that the District Judge shall enter a final order or judgment after considering the Bankruptcy Judge's proposed findings and conclusions, and after reviewing de novo those matters to which any party has timely and specifically objected. Therefore, if this Court were to decide that Defendant

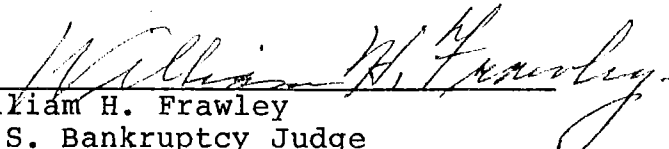
is entitled to a jury trial of Plaintiffs' underlying state-law claims, such jury trial could at most be advisory given the de novo review provision of sec. 157(c)(1). De novo review would require the District Court to hold a second jury trial if Defendant objected. Mohawk Industries, 46 B.R. 464, at 466, supra. This potential duplication of effort and additional time consumption would neither be in the parties' or the judicial system's best interest. For this reason, the Court will refer this matter to the District Court for further determination.<sup>3</sup>

ORDER

NOW, THEREFORE, IT IS HEREBY RESPECTFULLY ORDERED that said matter be referred to the District Court for further determination.

Dated: July 9, 1985.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

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<sup>3</sup> The Court is cognizant of the provision of 28 U.S.C. § 157(c)(2) allowing a Bankruptcy Court to fully adjudicate sec. 157(c)(1) "related to" cases with consent of the parties upon referral of the District Court. However, this is a matter for the District Court.

cc: Attorney Jeffrey P. White  
Attorney Paul Cornett