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2021 First Circuit Review

Sundaram v. Briry, LLC (In re Sundaram), 9 F.4th 16 (1st Cir. 2021).

Holding: When the underlying Chapter 13 case was dismissed, debtor’s appeal of bankruptcy court order releasing insurance funds to secured creditor became moot and must be dismissed.

Summary: The procedural history is the real “story” of this case. The debtor defaulted on her home mortgage, triggering a balloon-payment provision under the note. Less than three months later, a water pipe burst in the debtor’s home, rendering it uninhabitable. Months later, the debtor filed Chapter 13. Insurance proceeds paid in connection with the house mishap were turned over to the Chapter 13 trustee.

The mortgage creditor filed a motion seeking payment of the insurance proceeds. The debtor did not object. The bankruptcy court granted the motion, and the trustee turned over the funds to the secured creditor. The debtor moved for reconsideration; however, while that motion was pending, she also moved to dismiss the Chapter 13 case pursuant to § 1307(b). While the motion to dismiss was pending, the bankruptcy court denied the motion for reconsideration of the order paying the insurance proceeds to the secured creditor. The court then granted the debtor’s motion to dismiss, without objection.

The debtor appealed to the BAP, only with respect to the order releasing the insurance funds to the secured creditor. The BAP dismissed the appeal as moot by virtue of the prior dismissal of the case.

Describing the appeal as a matter of first impression, the First Circuit began its analysis with a discussion of “jurisdictional mootness”—when a federal court loses jurisdiction because “the issue on appeal is directly related to an underlying bankruptcy case and the underlying case is itself dismissed.” The court viewed this rule as “straightforward,” given that once the bankruptcy case is dismissed, “the possibility of reorganization evaporates” and the goal of reorganization is no longer possible. In the court’s view, the “appeal appears to fit seamlessly into that taxonomy.” The debtor contended that an exception to this rule exists—when the “issue on appeal is merely ancillary to the bankruptcy”—but the First Circuit reasoned that the issue before it was not merely ancillary to the debtor’s bankruptcy case. Her appeal focused on her purported right to the funds that the trustee distributed to the secured creditor, which was hardly “ancillary.”

The debtor nonetheless argued that the distribution to the secured creditor was in violation of the Code, which, in her view, meant the funds should still be redirected notwithstanding the dismissal. The First Circuit rejected this contention as well. Although it is true that when a Chapter 13 case is dismissed, the trustee must return all funds on hand to the debtor, here, the trustee had no funds on hand because he had distributed them to the secured creditor prior to dismissal of the case: “The fact of distribution makes a dispositive difference.”

Roy v. Canadian Pac. Ry. Co. (In re Lac-Mégantic Train Derailment Litig.), 999 F.3d 72, 75 (1st Cir. 2021), *petition for cert. filed*, No. 21-1047 (Jan. 27, 2022).

Holding: The Federal Rules of Bankruptcy Procedure—rather than the Federal Rules of Civil Procedure—apply to non-core, “related to” civil actions adjudicated in federal district courts.

Summary: This decision, continuing on a theme of matters of first impression, arose from the derailment of an oil train resulting in explosions in Lac-Mégantic, Canada. Victims of the tragedy brought state court wrongful death lawsuits against a host of defendants, including Montreal, Maine and Atlantic Railway (MMA). In due course, MMA sought bankruptcy protection in the District of Maine.

Defendant Canadian Pacific Railway Company (CP) was not among the original defendants but was later joined by the plaintiffs. The plaintiffs and the bankruptcy trustee petitioned the United States District Court in Maine for an order transferring the wrongful death cases to Maine pursuant to [28 U.S.C.A. § 157\(b\)\(5\)](#), which allows a district court having jurisdiction over a bankruptcy proceeding to order the transfer of “any personal injury tort and wrongful death claims” related to the bankruptcy proceeding to that district.

After settlements were reached with all parties except for CP—leaving CP as the lone defendant—CP moved to dismiss the complaint and the plaintiffs responded by moving to amend their complaint. The district court denied the plaintiffs’ motion and entered final judgment in favor of CP, dismissing the lawsuit. Twenty-eight days later, the plaintiffs moved to reconsider, which was within the permissible 28 days in Civil Rule 59(e), but outside of the 14-day window provided by Bankruptcy Rule 9023 for the same motion. CP challenged the motion for reconsideration on the ground that the motion was 14 days late under the Bankruptcy Rule. The district court denied the motion to reconsider; plaintiffs appealed to the First Circuit.

On appeal, CP continued to press the timeliness argument. There was a “domino” effect in this contention because, if the plaintiffs’ motion for reconsideration was late, it did not toll the appeals period and the appeal itself was also late, leaving the First Circuit without jurisdiction. To answer the question whether the Civil Rules or the Bankruptcy Rules govern when a federal court exercises related to jurisdiction, the First Circuit reviewed the “bankruptcy system and certain historical developments that contributed to the current configuration,” most notably the reconfiguration of the bankruptcy system in the wake of the Supreme Court’s decision in [Northern Pipeline Construction Co. v. Marathon Pipe Line Co.](#), 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982). The First Circuit observed that all three of the other courts of appeals to have considered the question determined that the Bankruptcy Rules apply and that both the Bankruptcy Rules and, to a degree, the Bankruptcy Code itself, reinforce that conclusion. The First Circuit’s decision can be read as a pragmatic one: any rule that would have the Civil Rules apply in related to cases could necessitate a single court to apply two separate sets of rules simultaneously and the First Circuit could not “imagine any reason why Congress would authorize jurisdiction for core and non-core cases in the same judicial district ... but require the district court to apply a different set of rules to each.” The Bankruptcy Rules apply; the First Circuit was without jurisdiction.

***U.S. Bank, N.A. v. Desmond (In re Mbazira)*, 15 F.4th 106 (1st Cir. 2021).**

Holding: Under Massachusetts law, a recorded mortgage that is not accompanied by a properly executed certificate of acknowledgment does not provide constructive notice to third parties, which allows the trustee to avoid the mortgage under § 544.

Summary: Massachusetts law requires a mortgage to include a certificate of acknowledgment, signed before a notary public or similar official, stating that the mortgagor signed the mortgage as her free act and deed. In this case, the debtor failed to sign her name to the notarized certificate of acknowledgment. After the mortgagee (U.S. Bank) initiated pre-foreclosure proceedings, the debtor filed Chapter 11 and commenced an adversary proceeding against U.S. Bank to avoid the mortgage due to the defective acknowledgment. U.S. Bank moved to dismiss arguing that, even with the defect, the mortgage had been properly recorded with the registry of deeds which provided *constructive* notice to third parties, and the mortgage had been registered with the Massachusetts Land Court, thereby providing adequate notice to subsequent bona fide purchasers. The bankruptcy court denied the bank’s motion and held that the defect in the certificate was material. The debtor then moved for summary judgment, which the court granted, avoiding the mortgage. The district court affirmed.

The First Circuit observed that there are two ways under Massachusetts law to provide constructive notice of a mortgage on real property: “One can either properly record the mortgage in the registry of deeds, ... or one can register the mortgage with the Land Court, which provides the same notice to third parties as if it were recorded.” Appearing to be a matter of first impression for the First Circuit, the court agreed with the bankruptcy court that the recording of the mortgage did not give constructive notice to third parties of the lien: the “plain language of Massachusetts law ... seems to render any recording of this mortgage

ineffective because it does not contain a proper certification of acknowledgement.” The First Circuit expressed little sympathy for the result since this “sort of defect is [] quite easily avoided in the first instance by the mortgagee at the time the mortgage is granted, or even thereafter.”

The First Circuit then rejected the bank’s alternative argument that registration in the Land Court provided sufficient notice to bona fide purchasers. The First Circuit agreed with the bankruptcy court that Massachusetts law “incorporates the filing standards for recorded land, including the acknowledgment requirement, into the land registration system as the condition for the act of registration to be notice to third parties.” Although the Land Court had accepted the mortgage for registration, constructive notice is defined by state law, and the lack of a proper certificate of acknowledgment meant the registration did not provide constructive notice to third parties under Massachusetts law. The First Circuit clarified that its decision applied to the “hypothetical bona fide purchaser *without* actual notice,” not an individual with actual notice of a mortgagee’s interest.

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