IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

In Re:

FREDERICK EARL LAWRENCE and NORMA DIANE LAWRENCE, Debtors.	Bankruptcy Case No. 03-40532

MEMORANDUM OF DECISION

Appearances:

Bradley E. Rice, Twin Falls, Idaho, Attorney for Debtors.

Lowell N. Hawkes, Pocatello, Idaho, Special Counsel for Trustee.

Craig Meadows, HAWLEY TROXELL ENNIS & HAWLEY, Boise, Idaho, Attorney for Eric Clark.

Robert M. Harwood, BENOIT, ALEXANDER, HARWOOD HIGH & VALDEZ, Twin Falls, Idaho, Attorney for Keith Hutchinson.

Jim Spinner, SERVICE SPINNER & GRAY, Pocatello, Idaho, Attorney for Trustee Sam Hopkins.

R. Sam Hopkins, Pocatello, Idaho, Chapter 7 Trustee.

Background

The Chapter 7 trustee Sam Hopkins and the Chapter 7 Debtors Frederick and Norma Lawrence, acting through special counsel Lowell Hawkes ("Special Counsel"), ask the Court to enforce a settlement agreement allegedly reached with the attorneys for the adverse parties in a state court legal malpractice action initiated by Mr. Lawrence before bankruptcy. One of the two defendant attorneys in the state court lawsuit, Mr. Hutchinson, contends no enforceable compromise agreement was ever concluded. After argument from all the parties at a hearing conducted on October 24, 2005, and after considering the parties' arguments and post-hearing submissions,[1] the Court concludes that the interests of justice require it abstain from deciding whether an enforceable settlement was reached.[2]

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[1] The Court gave the parties until October 28, 2005, to make additional submissions, and specifically asked the parties to provide the Court with a copy of the transcript of the state court proceedings in question. Mr. Harwood, counsel for Mr. Hutchinson, submitted a copy of the state court's summary judgment order and the transcript, albeit not until November 9 and 10, respectively, *see* Docket Nos. 74, 76. The Court determines no prejudice resulted from the tardy nature of these submissions, and they have been considered by the Court.

[2] To the extent required by the Rules, what follows constitutes the Court's findings of fact and conclusions of law . *See* Fed. R. Bankr. P. 7052; 9014.

Facts

Debtors Frederick and Norma Lawrence filed for bankruptcy under Chapter 7 of the Bankruptcy Code on April 1, 2003. In their schedules, they disclosed Mr. Lawrence was the plaintiff in a pending Idaho state court lawsuit for alleged legal malpractice, captioned *Frederick Lawrence v. Keith Hutchinson, Eric R. Clark, & Allstate Insurance*. Schedule C, Docket No. 1.[3] On August 9, 2005, the Court approved the Chapter 7 Trustee's application to employ Mr. Hawkes, the attorney who had been representing Debtors, as his special counsel to prosecute the lawsuit on behalf of Debtors' bankruptcy estate.

Apparently, there were settlement negotiations between the parties. Aff. of Counsel, Ex. A, Docket No. 67. On September 13, 2004, Mr. Robert Harwood, Counsel for defendant Hutchinson, informed the state court that a "settlement, in principle, has been reached with all the parties" which would resolve Debtor's claims against both defendants based upon a payment to Debtor and the bankruptcy estate of $37,500, with each defendant to pay one-half of that sum. Aff. of Counsel, Ex. A, Docket No. 67. Based upon the settlement, the state court vacated the trial of the action, set for October 5, 2004. *Id.* The parties then

[3] The facts concerning the lawsuit against Mr. Lawrence's former attorneys are set forth in the Court's August 6, 2005, Memorandum of Decision, Docket No. 41. They need not be repeated here.

corresponded regarding the terms of the proposed settlement and release documents. *See* Docket Nos. 67, 68, 69, 70 and attachments thereto. No written settlement agreement or releases were ever executed.

On March 7, 2005, the state court conducted a status conference concerning the action. The parties advised the judge that they had been unable to agree upon the language of the release documents. Aff. of Counsel, Ex. C, Docket No. 67. In October 2005, defendant Hutchinson, through Mr. Harwood, filed a motion for summary judgment. Special Counsel opposed the motion on the grounds that a binding settlement had been reached by the parties, thereby precluding any decision by the state court on the merits of the action. Aff. of Hutchinson, Attach. 2 at 3, Docket No. 70; Supp. Filing, Oct. 17, 2005 Tr. at 43–48, Docket No. 76. Defendant Eric Clark did not join in defendant Hutchinson's motion for summary judgment.[4]

On October 17, 2005, the state court granted defendant Hutchinson's motion, resulting in dismissal of all claims asserted against him. Supp. Filing, Summ. J. and Order, Docket No. 74; Supp. Filing, Oct. 17, 2005 Tr. at 60, Docket

[4] Indeed, Defendant Clark acknowledges there was a settlement with Debtor and apparently, subject to Court approval of the deal, has agreed to pay his share of the settlement funds to Debtor and Trustee. *See* Docket No. 78.

No. 76. Regarding Special Counsel's argument that the settlement precluded granting summary judgment, the state court observed:

> I have an issue about my authority to essentially enforce what amounts to a claimed accord in this case, first, on the basis that it seems to me that there are tons of factual questions . . . . It is clear to me that you gentlemen reached an agreement on the numbers. . . . It is also clear to me that it is customary in every case . . . to conclude with the execution of some form of reasonable release document. . . . I'm not in a position to sit here and dictate to you what a standard release is. . . . I think that the answer is, in essence, that you have to bring a subsequent action to enforce the accord. So, my ruling here granting Mr. Hutchinson's motion is without prejudice to your right to do that, be it in this court or somewhere else.

Supp. Filing, Oct. 17, 2005 Tr. at 60–62, Docket No. 76. The state court's order echoed the court's sentiments, concluding that in the absence of Debtor's submission of an amended pleading adding the defense of accord and satisfaction, the state court had no authority to consider the issue in defense of defendant Hutchinson's motion for summary judgment. But, the order stated that entry of the summary judgment order was without prejudice to Debtor's right to file an "action, independent of this case" to enforce his claim of accord and satisfaction. Supp. Filing, Summ. J. and Order, Docket No. 74. The state court has scheduled the action for trial against defendant Clark, now the only remaining defendant in

the case, to commence on December 6, 2005. Supp. Filing, June 20, 2005 Tr. at 33, Docket No. 74.

On October 3, 2005, before the state court granted Hutchinson's motion for summary judgment, Special Counsel filed a Motion to Enforce Joint Compromise Settlement Agreement in this Court. In the motion, Debtor and Trustee seek to enforce the parties' alleged settlement agreement. Docket No. 65.[5] This Court conducted a hearing concerning this motion on October 24, 2005, just days after the state court had issued its summary judgment ruling. Through Mr. Hawkes, Debtors and the Trustee argue that because the bankruptcy court has the responsibility and power to review and approve any compromise of the bankruptcy estate's claims against Hutchinson, *see* Fed. R. Bankr. P. 9019(a), the bankruptcy court can and should resolve the parties' dispute over whether an enforceable settlement agreement was reached. Hutchinson and Clark disagree, arguing that the parties should resolve the question of settlement in state court.

[5] Special Counsel has also filed an adversary proceeding on Trustee's behalf against Hutchinson asserting the same claim and arguments. Docket No. 73.

Disposition

Without regard to the merits of Special Counsel's arguments that an enforceable settlement with the malpractice defendants was reached, in this instance, the Court exercises its discretion to abstain from deciding such issues. 28 U.S.C. § 1334(c)(1), which governs permissive abstention, allows the bankruptcy court "in the interest of justice or in the interest of comity with State courts or respect for State law" to abstain from hearing a particular proceeding arising under, arising in, or related to a case under title 11.

In deciding whether to abstain, the Ninth Circuit has instructed that several factors should be considered by the Court. These include:

> (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than the form of an asserted 'core' proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of

> the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceedings of nondebtor parties.

Christensen v. Tucson Estates, Inc. (*In re Tucson Estates, Inc.*), 912 F.2d 1162, 1167 (9th Cir. 1990) (quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D.Tex. 1987)). *See also Bowen Corp., Inc. v. Sec. Pacific Bank Idaho, FSB* (*In re Bowen Corp., Inc.*), 150 B.R. 777, 784 (Bankr. D. Idaho 1993) (applying *Tucson* factors).

The Court has considered the *Tucson Estates* factors. Virtually all of them favor abstention in this setting. While the state court action is admittedly related to the bankruptcy case in that the bankruptcy estate holds an interest in the outcome of that action, the relationship of that state action to the bankruptcy case is fairly tenuous. The proceeds from a settlement of the state court action could provide funds to distribute to Debtors' creditors to the extent the settlement proceeds are not exempt. And Fed. R. Bankr. P. 9019(a) requires the bankruptcy court to approve the reasonableness of any settlement reached. But that is as far as the relationship goes.

Other than under the bankruptcy jurisdiction provisions of 28 U.S.C. § 1334, there would be no basis for federal jurisdiction over Debtors' claims against the state court defendants. The Debtors' and bankruptcy estate's

malpractice claims against the defendants are based upon state tort law, and any claim that the action was settled would necessarily be evaluated under state contract law. *Rains v. Flinn* (*In re Rains*), 2005 WL 2979235 at *8, 428 F.3d 893, ___ (9th Cir. Nov. 8, 2005) (noting that the validity of settlements in bankruptcy cases is resolved by reference to state contract law) (citing *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 14, 20 (2000)); *Van Orden v. Idaho Agricultural Credit Assoc.* (*In re Van Orden*), 03.3 I.B.C.R. 161, 164 (Bankr. D. Idaho 2003) (noting that parties' stipulations, incorporated into their Chapter 11 plan, were to be interpreted according to state contract law), *aff'd, J.R. Simplot Co. v. Idaho Agricultural Credit Assoc.*, BAP No. ID-03-1435 (9th Cir. BAP Sept. 20, 2004). No peculiar issues of bankruptcy law are presented by this dispute. The state court proceedings remain pending, and if Debtors and Trustee disagree with the state court's refusal to enforce the alleged settlement and grant of summary judgment to Hutchinson, they may appeal the state court's decision. Alternatively, Special Counsel can accept the state court's invitation to pursue an independent action to enforce the settlement.

Debtors and Trustee argue that the issues could be litigated to a conclusion more quickly in bankruptcy court than in state court. Even if that

assumption is correct,[6] considerations of speed and convenience do not outweigh the other factors favoring abstention. All things considered, the Court concludes it should abstain. If they choose, Debtors and Trustee should pursue their claims in state court.[7]

Conclusion

Under the *Tuscon Estates* factors, this Court should abstain. Special Counsel's Motion to Enforce Joint Compromise Settlement Agreement, Docket No. 65, will be denied by separate order.

Dated: December 2, 2005

Honorable Jim D. Pappas
United States Bankruptcy Judge

[6] The Court acknowledges that Idaho's state courts are busy. However, at this particular time, given the recent glut in bankruptcy filings in anticipation of reform of the bankruptcy laws, this Court's docket is extremely crowded, and its resources are best reserved for those disputes requiring resolution by the federal bankruptcy court.

[7] Special Counsel's suggestion that this Court intervene in this dispute is somewhat ironic. Only a few short months ago, Special Counsel and his client, the Chapter 7 trustee, urged that it was "in the best interests of the bankruptcy estate" to retain Special Counsel to pursue this action in state court. Application to Employ Special Counsel, ¶ V, Docket No. 62. The Court agreed then, and the same is true today.