UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In Re: **Levi M. Power and** **Sherri A. Power,** **Debtors.**	**Bankruptcy Case** **No. 16-40636-JDP**

Gary L. Rainsdon, Trustee, **Plaintiff,** **vs.** **America First Federal** **Credit Union,** **Defendant.**	**Adv. Proceeding** **No. 16-08034-JDP**

DECISION AND ORDER

Appearances:

Daniel C. Green, RACINE OLSON NYE BUDGE, CHARTERED, Pocatello, Idaho, Attorney for Plaintiff.

Darwin H. Bingham, SCALLEY READING BATES, HANSEN & RASMUSSEN, P.C., Salt Lake City, Utah, Attorney for Defendant.

Plaintiff Gary Rainsdon, chapter 7 trustee, commenced this adversary proceeding against Defendant America First Credit Union on November 23, 2016. Dkt. No. 1. In his Complaint, relying upon §§ 547(b) and 550 of the Bankruptcy Code,[1] Plaintiff seeks to avoid and recover a security interest granted to Plaintiff in a 2015 Chrysler van securing the loan made to Debtors Levi and Sherri Power to acquire the vehicle shortly before they filed for bankruptcy relief. In its Answer, Dkt. No. 5, and Amended Answer, Dkt. No. 11, Defendant denies Plaintiff is entitled to relief.

In its Pretrial Order and Notice of Trial, the Court ordered the parties to file briefs regarding (a) whether this Court had the constitutional authority to enter a final judgment and orders in this adversary proceeding, and (b) whether Defendant was entitled to a jury trial, as

[1] Unless otherwise indicated, all statutory references are to Title 11, U.S.C. All Rules references are to the Federal Rules of Bankruptcy Procedure, and all Civil Rules references are to the Federal Rules of Civil Procedure.

demanded in its Answers. Dkt. No. 8 at ¶ 1. The parties have filed those briefs. Dkt. Nos. 12, 14, and 15. Having reviewed the record, and having duly considered the parties arguments and authorities, for the following reasons, the Court, acting on its own motion, hereby determines that it does indeed have the constitutional authority to not only hear, but to finally determine the issues raised, and to enter a final judgment and orders in this adversary proceeding.[2] The Court also concludes that Defendant is not entitled to a jury trial.

DECISION

A. The Bankruptcy Court's Constitutional Authority

Plaintiff sued Defendant in this bankruptcy case to avoid and recover a pre-bankruptcy transfer of an interest in the Debtors' property to Defendant as a preference. §§ 547(b), 550(a). Under 28 U.S.C. § 1334(b), the U.S. District Court is granted jurisdiction over this action because, as noted

[2] *See* Rule 7016(b)(2) (providing that the bankruptcy court shall decide, on its own motion or a party's timely motion, whether it will hear and determine the proceeding; hear the proceeding, but submit proposed findings and conclusions to the district court for entry of a final judgment or order; or take "some other action."

above, it is a proceeding that arises under title 11, U.S.C., the Bankruptcy Code. The District Court has referred all such actions to this Bankruptcy Court. *See* 28 U.S.C. § 157(a); Third Amended General Order No. 38.

A bankruptcy judge may hear and finally adjudicate "all core proceedings" in a bankrupt case. 28 U.S.C. § 157(b)(1). A proceeding to avoid and recover a preference is a core proceeding. 28 U.S.C. § 157(b)(2)(F).[3] The bankruptcy judge shall determine, on the judge's own motion, or on the motion of a party, whether a proceeding is a core proceeding.

In obedience to Rule 7012(b), Defendant's answers make clear, that

[3] Defendant, in its briefing, argues that whether this action is a "core" or "non-core" proceedings is irrelevant, since a bankruptcy judge may hear either variety of action, and Defendant has not questioned this Court's authority to hear this proceeding. However, the difference is indeed important here, because if the proceeding is "non-core", unless both parties consent, the bankruptcy court may not "determine" the outcome, and must instead, submit proposed findings and conclusions to the district court for entry of a final order or judgment. *See* 28 U.S.C. § 157(c)(1) (instructing that, unless the parties consent per subsection (c)(2), the bankruptcy judge "shall" submit proposed findings and conclusions to the district court for de novo review and entry of "appropriate orders and judgments".)

even if this is a core proceeding, it does not consent to the entry of final orders or a judgment by the bankruptcy court. In its briefs, it cites the case law emanating from *Stern v. Marshall*, 131 S.Ct. 2594 (2011), and suggests that, because of this, the Court should transmit proposed findings and conclusions to the district court for entry of a judgment after *de novo* review. *See* Rule 9033(a)-(d).

Defendant's suggestion is misplaced. This is not a "*Stern*-type" action. To the contrary, it is clear that a bankruptcy court possesses both the statutory and constitutional authority to enter a final judgment in a preference action prosecuted by a trustee against a creditor. *See Stern*, 131 S. Ct. at 2615-18 (distinguishing preference from *Stern* claims). For multiple reasons, this conclusions is apropos given the facts in this case.

First, in this particular preference action, the Court will effectively determine the enforceability of Defendant's security interest in Debtors' van, and its entitlement to any proceeds from the liquidation of that vehicle, in this bankruptcy case. Surely, the bankruptcy court can constitutionally adjudicate Defendant's rights in the property of the

bankruptcy estate even without Defendant's consent. *Katchen v. Landy*, 86 S. Ct. 467, 471 (1966) ("The bankruptcy courts have summary jurisdiction to adjudicate controversies relating to property over which they have actual or constructive possession."); *Res. Funding, Inc. v. Pac. Cont'l Bank (In re Washington Coast I, L.L.C.)*, 485 B.R. 393, 405 (9th Cir. BAP 2012) (holding that the bankruptcy court had constitutional authority to resolve a lien priority dispute because it was part and parcel of the claims resolution process and thus integral to the restructuring of the debtor creditor relationship).

Second, Defendant acknowledges that it has filed a proof of claim in this case, and post-*Stern*, the case law is abundant that a bankruptcy court can finally determine a preference claim asserted against a creditor of the debtor. *See, e.g., Solution Trust v. 2100 Grand LLC (In re AWTR Liquidation Inc.)*, 547 B.R. 831, 838 (Bankr. C.D. Cal. 2016); *KHI Liquidation Tr. (In re Kimball Hill, Inc.)*, 480 B.R. 894, 905–06 (Bankr. N.D. Ill. 2012) (collecting post-*Stern* cases holding that bankruptcy courts have the constitutional authority to enter final orders and a judgment in preference actions).

While it filed a proof of claim in this bankruptcy case on January 13, 2017, Claim No. 5, Defendant argues that it was based upon a credit card debt unrelated to the car loan. Even assuming this representation is correct, under § 502(d), the Court must disallow Defendant's claim in the bankruptcy case if it holds property recoverable from Defendant by the estate under, among other provisions, § 550. As a result, adjudication of Plaintiff's preference claims against Defendant "would necessarily be resolved in the claims allowance process." *Stern*, 131 S. Ct. at 2618. By filing the claim, Defendant effectively consented to the power of the Court to determine its rights in this bankruptcy case. *Stern*, 131 S. Ct. at 2616 (citing *Katchen*, 86 S.Ct. at n. 9); *H.K. & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991, 997 (9th Cir. 1998) (citing *Katchen*, 498 U.S. at 44-45).

In sum, the Court concludes it has both the statutory and constitutional power to hear and determine the issues in this action.[4]

[4] Defendant, in its briefs, dwells considerably on the argument that the "burden of proof" concerning the Court's authority to enter a final judgment in this action rests with Plaintiff, or the Court. Defendant's argument misses the point. Measuring the Court's authority, based upon undisputed facts set forth in the pleadings, implicates a question of law to be decided by the Court, not a

B. Defendant's Right to a Jury Trial

Defendant timely requested a jury trial by demanding one in its answers. *See* Rule 9015(a) (incorporating Civil Rule 38). If it is entitled to a jury trial, the bankruptcy court may only conduct it if the parties consent. 28 U.S.C. § 157(e); Rule 9015(b). Defendant requests that the jury trial occur in district court. However, the Court concludes that Defendant lacks the right to a jury trial in this action.

Defendant cites no statutory or case law authority to support its jury demand. For the same reasons discussed above, by filing a proof of claim in this bankruptcy case, Defendant brought itself within the equitable jurisdiction of the bankruptcy court. *See Langenkamp v. Culp*, 111 S.Ct. 330, 331 (1990) (citing *Granfinanciera, S.A. v. Nordberg*, 109 S. Ct. 2782, 2798–90 (1989)). The Court therefore concludes that Defendant has no right to a jury trial; this action shall be tried to the Court.

/ / /

ORDER

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question of fact.

For all of the above reasons, the Court concludes that (1) it has the statutory and constitutional authority to hear and enter a final judgment and orders in this adversary proceeding, and (2) that Defendant has no right to a jury trial. The action shall proceed as specified in the Pretrial Order.

IT IS SO ORDERED.

Dated: April 3, 2017

Honorable Jim D. Pappas
United States Bankruptcy Judge