
IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:) Chapter 7 Case
) Number 89-10275
STEWART-HALL MARKETING, INC.)
d/b/a STEWART MARKETING, INC.)
)
Debtor)

STEWART-HALL MARKETING, INC.) FILED
) at 4 O'clock & 18 min. P.M.
Plaintiff) Date: 2-15-91
)

vs.)

BOB MADDOX DODGE, INC.)
)
Defendant and Third)
Party Plaintiff)
)

vs.)

Adversary Proceeding
Number 89-1065

WAGT TELEVISION, INC., WJBF-TV,)
AD-VENTURE MARKETING, INC.,)
JONES INTERCABLE, AND WBBQ-AM/FM)
)
Third Party Defendants)
)

IN RE:)

STEWART-HALL MARKETING, INC.)
d/b/a STEWART MARKETING, INC.)
)
Debtor)

Chapter 7 Case
Number 89-10275

)

STEWART-HALL MARKETING, INC.)	
)	
Plaintiff)	
)	
vs.)	
)	
JOHN L. MIXON)	
)	
Defendant and Third)	
Party Plaintiff)	
)	
vs.)	Adversary Proceeding
)	Number <u>89-1067</u>
WAGT TELEVISION, INC., WJBF-TV,)	
AND AD-VENTURE MARKETING, INC.)	
)	
Third Party Defendants)	

**MEMORANDUM AND ORDER ON JURISDICTIONAL AND VENUE DEFENSES
AND DEMAND FOR JURY TRIAL**

These matters come before this court upon a complaint filed by Stewart-Hall Marketing, Inc., as debtor-in-possession,¹ (hereinafter "plaintiff") against Bob Maddox Dodge, Inc. in adversary proceeding No. 89-1065 and John L. Mixon in adversary proceeding No. 89-1067 (hereinafter collectively "defendant") for turnover of property of the estate and collection of accounts receivable.² Defendant in each case filed responsive pleadings and third party complaint against the above referenced third party

¹The underlying bankruptcy case was converted to a case under Chapter 7 by order dated December 7, 1989 and H. Gibbs Flanders was subsequently designated as the Chapter 7 trustee and is pursuing this action on behalf of the estate.

²As the jurisdictional and venue defenses and jury trial demand are identical in both adversary proceedings, a single consolidated order is entered in both cases resolving the matters addressed. Bankruptcy Rule 7042.

defendants. The third party defendants in each case have filed

responsive pleadings. In defendant's answer, the defendant alleges in their fourth defense that this court lacks jurisdiction over this matter and that venue is not proper in this forum. Additionally, the defendant demands a jury trial. Defendant's jurisdictional and venue defenses are without merit.

The United States Bankruptcy Court for the Southern District of Georgia is a unit of the United States District Court for the Southern District of Georgia. The bankruptcy judge acts as a judicial officer of the district court and as such may exercise the authority conferred under title 28 United States Code Chapter 6, §151 et seq. with respect to any action, suit or proceeding. 28 U.S.C. §151³; See also, Cong. Rec.

³28 U.S.C. §151 provides:

Designation of Bankruptcy Courts.

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

S6084 (daily ed.) May 21, 1984. Bankruptcy judges are authorized to hear and determine all cases under title 11 United States Code, the Bankruptcy Code, and all core

proceedings arising under title 11, or arising in a case under title 11 and may enter appropriate final orders and judgments. 28 U.S.C. §157(a) & (b)⁴.

Pursuant to 11 U.S.C. §541 property of the estate consists of all legal or equitable interest of the debtor in property as of the commencement of the case. United States Code title 11 §542 requires any entity that owes a debt that is property of the estate to pay such debt. The trustee, as

⁴28 U.S.C. §157(a) & (b) provides in pertinent part:

Procedures.

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b) (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under Section 158 of this title [28].

(2) Core proceedings include, but are not limited to

. . .

(E) orders to turn over property of the estate; . . .

successor to the debtor-in-possession, seeks the turnover of property of the estate through recovery of a debt, an account receivable, due the estate as of the date of filing of the bankruptcy case. This cause of action asserted by the plaintiff is a "core proceeding" arising under title

11. 28 U.S.C. §157(b)(2)(E).

Subject matter jurisdiction is proper. 28 U.S.C. §1334(b)⁵. The district court has original but not exclusive jurisdiction of all civil proceedings arising under title 11. Adversary proceedings seeking turnover property of the estate are "core proceedings" arising under title 11 [28 U.S.C. §157(b)(2)(E)] and the district court has original but not exclusive jurisdiction to resolve civil proceedings arising under title 11 [28 U.S.C. §1334(b)]. By referral from the district court, this court, the bankruptcy court, has jurisdiction as a unit of the district court to resolve and enter final orders in all core proceedings arising under title 11. Core proceedings include adversary proceedings seeking the turnover of property of

⁵28 U.S.C. §1334(b) provides:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district court shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

the estate such as pled in this case.

Venue for a proceeding arising under title 11 rests in the district court in which the bankruptcy case is pending. 28 U.S.C.

§1409(a)⁶. The underlying bankruptcy proceeding initially brought as a Chapter 11 case of reorganization and converted to a case under Chapter 7 is pending in the United States Bankruptcy Court for the Southern District of Georgia, a unit of the United States District Court for the Southern District of Georgia. Venue is proper in the Southern District of Georgia to resolve this adversary proceeding. Statutorily, proper jurisdiction and venue rests in the United States Bankruptcy Court for the Southern District of Georgia. 28 U.S.C. §151, §157(a)&(b)(2)(E), §1334(b), §1409(a).

⁶28 U.S.C. §1409 provides in pertinent part:

Venue of Proceedings arising under title 11 or arising in or related to cases under title 11.

(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending. (emphasis added)

The defendant is entitled to a jury trial. See, Granfinanciera, S.A. v. Nordberg, 192 U.S. ____ 109 S.Ct. 2782, 106 L.E.2d 26 (1989); Langenkamp v. Culp, ____ U.S. ____ 111 S.Ct. 330, ____ L.E.2d ____ (November 13, 1990). Although Granfinanciera and Langenkamp dealt with a defendant's right to a jury trial in an adversary proceeding brought by a trustee seeking to recover a preferential transfer, the analysis used by the Court is equally applicable in a turnover action. The action brought here by the

trustee is to recover on an account receivable. Plaintiff alleges that it provided services or products to the defendant for which plaintiff remains unpaid. "[W]here an action is simply for the recovery . . . of a money judgment, the action is one at law." Granfinanciera S.A. v. Nordberg, supra at 2793, Pernell v. Southhall Realty, 416 U.S. 363, 370, 94 S.Ct. 1723, 1727, 40 L.E.2d 198 (1974), quoting Whitehead v. Shattuck, 138 U.S. 146, 151, 11 S.Ct. 276, 277, 34 L.E.2d 873 (1891); Diary Queen, Inc. v. Wood, 369 U.S. 469, 476, 82 S.Ct. 894, 899, 8 L.E.2d 44 (1962). The fact that the trustee brings this action as a turnover proceeding in bankruptcy court does not alter the underlying nature of the cause of action, an action at law to recover a debt. In an action at law where the value in controversy exceeds twenty dollars, the right of trial by jury is preserved. U.S. Const.

Amendment VII⁷. The defendant's right to a jury trial on this action at law seeking a resolution of a "private right" is not altered by a characterization of the cause of action as a complaint seeking turnover of property of the estate, and the filing of the complaint in the bankruptcy court. See generally Granfinanciera, S.A. v. Nordberg, supra;

Langenkamp v. Culp, supra.

Having determined that the defendant's right to a jury trial is constitutionally protected, may this court conduct such a trial? Compare In re: United Missouri Bank of Kansas City, N.A., 901 F.2d 1449 (8th Cir. 1990) and Kaiser Steel Corporation v. Frates, et al., (In re: Kaiser Steel Corporation), 911 F.2d 380 (10th Cir. 1990) (no statutory authority granted in the Bankruptcy Code empowers the bankruptcy court to conduct jury trials) with Ben Cooper, Inc. v. Insurance Co. of the State of Pennsylvania. et; al., (In re: Ben Cooper, Inc.), 896 F.2d 1394 (2nd Cir. 1990) (jury trials in core proceedings in the bankruptcy court do not violate Article III of the Constitution). United States Code

⁷United States Constitution Amendment VII provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

title 28 §157 procedurally authorizes the district court to refer all proceedings arising under title 11 to the bankruptcy judges for the district. United States Code title 28 §157(b) (1) procedurally authorizes the bankruptcy judge to hear and determine all core proceedings arising under title 11 and authorizes the bankruptcy judge to enter appropriate final orders and judgments. Pursuant to 28 U.S.C. §157(b) (2) (E) the cause of action now before this court is such a core proceeding. The clear unambiguous language of the statute reflects the congressional intent that the bankruptcy court enter final orders and judgments in core proceedings. Contra, United Missouri Bank of Kansas City. N.A. supra at 1453-54.

Under a Granfinanciera analysis, an adversary proceeding

brought seeking turn over of property of the bankruptcy estate under 11 U.S.C. §542(b) is an action seeking to resolve a private legal right to which the defendant is entitled to a jury trial pursuant to the seventh amendment. The seventh amendment does not require that the jury trial be conducted in a court constituted under Article III of the Constitution. United States Code title 28 §157(b) (2) (E) statutorily provides that the bankruptcy judge by reference from the district court has the authority to enter a final judgment. There exists neither a statutory nor seventh amendment bar to the entry of the final judgment based

upon a jury determination in the bankruptcy court. However, this does not resolve the basic constitutional question.

May the district court, an Article III court, refer pursuant to 28 U.S.C. §157 the judicial power of the United States embodied in Article III of the Constitution to the bankruptcy court, an Article I tribunal, to resolve a private legal right. The United States Court of Appeals for the Second Circuit appears to have answered in the affirmative. See generally, In re: Ben Cooper, Inc. supra.

If bankruptcy courts have the power to enter final judgments without violating Article III, it follows that jury verdicts in the bankruptcy courts do not violate Article III. The primary purpose of this Article is to ensure a federal judiciary free from pressure from the other branches of government. (citations omitted) If anything, jurors are less likely to feel pressure from the executive and legislative branches than are bankruptcy judges, who depend

on the other branches for reappointment to office (citation omitted). Additionally, the practice of jury trials in Article I courts has been upheld when the authority of the Article I judges does not otherwise run afoul of Article III. (citations omitted)

In re: Ben Cooper, Inc. supra at p. 1403. The Ben Cooper court assumes that the bankruptcy court has the constitutional power to enter final orders adjudicating private legal rights. Article III of the Constitution provides:

The judicial Power of the United States, shall

be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Unfortunately, the Ben Cooper assumption ignores the lesson of Northern Pipeline Constr. Co. v. Marathon Pipeline Co., 458 U.S. 50, 102 S.Ct. 2858, 73 L.E.2d 598 (1982).

In Marathon, the Supreme Court held that the 1978 [bankruptcy] Act's jurisdictional provisions vested all 'essential attributes of judicial power in the bankruptcy courts, in violation of article III.' Marathon, 458 U.S. at 84-85 102 S.Ct. at 2878-79. The Court emphasized the fact that the bankruptcy courts exercised all ordinary powers of the district courts, including conducting jury trials . . . Id. at 85, 102 S.Ct. at 2878-79. The Court also noted that decisions were reviewable only under the 'clearly erroneous' standard and did not depend on article III court confirmation Id. at 85-86, 102 S.Ct. at 2878-79. Accordingly, the Court struck down the 1978 Act's jurisdictional provisions as violating article

In re: Kaiser Steel Corporation supra at 289-290.

If the resolution of disputes involving purely private legal rights is an exercise of the judicial power of the United States, Marathon calls into question the constitutional authority of the district court to delegate by reference the exercise of that judicial power to the Article I bankruptcy court. Accord, Granfinanciera supra.

While the constitutionality of a statutory referral of the judicial power under Article III of the Constitution to a non-Article III court to resolve private legal rights is in question, what is not questioned is that this court, an Article I court, lacks the authority to review the constitutionality of 28 U.S.C. §157. See generally, Marbury v. Madison, 5 U.S. 137, 1 Cranch 137, 2 L.E. 60 (1803).

The litigants before the Court deserve and have a right to a trial by jury presided over by a court of unquestionable competent jurisdiction. Until the United States Supreme Court speaks finally on this issue, the only court that meets this requirement is the district court.

Ellenberg v. Bouldin, (In re: Bouldin) WL 95746 (Bankr. N.D. Ga., 1990). However, until the Supreme Court makes such a final determination, pursuant to 28 U.S.C. §157 this court is statutorily vested by virtue of the reference with the authority to preside over these adversary matters and will do so through discovery and the preparation of a pretrial order. Upon the completion of the

pretrial order, this court shall recommend to the district court that it revoke pursuant to 28 U.S.C. §157(d)⁸ the reference of

⁸28 U.S.C. §157(d) provides:

(d) The district court may withdraw, in whole or in part, any case or proceeding

this adversary proceeding, approve the pretrial order, empanel a jury and based upon the jury findings following trial enter a final judgment. It is therefore ORDERED that defendants' jurisdictional and venue defenses in each of these adversary proceedings are overruled.

Further ORDERED that defendants' jury trial demands in each of these adversary proceedings are sustained.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 15th day of February, 1990.

referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.