

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**  
SEP 30 2004

*[Signature]*  
CLERK

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IN RE:

Chapter 7 No. 02-40922  
Adversary No. 03-4039

THE CREDIT STORE, INC.,

Debtor.

\*\*\*\*\*

B-LINE, L.L.C., a Washington limited liability company,

CIV 03-4284

Appellant,

-vs-

MEMORANDUM OPINION  
AND ORDER

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Coast Business Credit, a division of Southern Pacific Bank,

Appellee.

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B-Line appeals the Bankruptcy Court's<sup>1</sup> dismissal of B-Line's adversary proceeding against the Federal Deposit Insurance Corporation ("FDIC"), based upon lack of subject matter jurisdiction. The appeal has been fully briefed by the parties and based upon the written record the Court affirms the Bankruptcy Court's decision.

<sup>1</sup>The Honorable Irvin N. Hoyt, Bankruptcy Judge for the District of South Dakota.

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U.S. BANKRUPTCY COURT  
DIST. OF SOUTH DAKOTA

## BACKGROUND

In April 2001, B-Line and The Credit Store, Inc. entered into a purchase and sales agreement where the Credit Store agreed to sell to B-Line certain accounts owned by the Credit Store. B-Line became the owner of those accounts. B-Line later discovered that a substantial part of the accounts it purchased were either not owned by the Credit Store or the Credit Store could not fulfill its warranty under the agreement. In October 2001 the two companies entered into a Rescission Agreement, obligating B-Line to transfer and deliver the accounts back to the Credit Store upon receipt of \$222,865.53 from the Credit Store. Until B-Line received the Credit Store's payment under the Rescission Agreement, B-Line retained title to the accounts. The Credit Store paid all but \$30,000 of the amount due to B-Line under the Rescission Agreement. Possession of the accounts was given to the Credit Store while B-Line has title to the accounts.

The Credit Store filed for relief under Chapter 11 of the bankruptcy code on August 15, 2002. On December 2, 2002, B-Line commenced an adversary proceeding against the Credit Store over the ownership of the accounts. Pursuant to a stipulation of the parties, the Bankruptcy Court entered an Order for Permanent Injunction and for Accounting on December 12, 2002. The Order required the Credit Store to "place all funds collected on the Accounts into a segregated interest-bearing bank account and not disburse any funds from said account except upon further order from the Court." The December 12, 2002 Order further provided that the Credit Store "has no legal interest in the Accounts and they are not property of [Debtor's] estate under 11 U.S.C. § 541(a)(1)."

On February 4, 2003, the Credit Store's case was converted to Chapter 7 of the bankruptcy code. One of the Credit Store's secured creditors was Coast Business Credit ("Coast"), a division of Southern Pacific Bank in California. On February 7, 2003, the FDIC was appointed as receiver of Southern Pacific. On March 21, 2003, the Bankruptcy Court entered an Order for Final Settlement and for Dismissal with Prejudice, pursuant to a second stipulation between the Credit Store and B-Line. The March 2003 Order provided that the December 2002 Order would remain in effect and again provided that the accounts were not property of the Credit Store's bankruptcy

estate. In March 2003, the Credit Store revealed that the funds collected on the accounts had been taken by its secured creditor Coast, for which the FDIC had been appointed the receiver.

On April 16, 2003, B-Line filed a Motion and Affidavit for Release of Funds, seeking an order from the Bankruptcy Court directing the Credit Store's bankruptcy Trustee to disburse to it the funds collected on the accounts. The Trustee and the FDIC objected to B-Line's motion and it was denied on May 22, 2003.

Rather than following the FDIC's administrative claims process under 18 U.S.C. § 1821, B-Line initiated an adversary proceeding against the FDIC on June 20, 2003, seeking to enforce the permanent injunction entered in the Credit Store's bankruptcy case requiring the FDIC to place all funds generated by the accounts into a segregated account. The FDIC filed a motion to dismiss the adversary proceeding based upon lack of subject matter jurisdiction. The Bankruptcy Court granted the FDIC's motion to dismiss on December 23, 2003. B-Line appeals the decision of the Bankruptcy Court pursuant to 28 U.S.C. § 158(a) or (b).

The Bankruptcy Court first considered whether the present adversary proceeding was a core proceeding under 28 U.S.C. § 157(b)(2)(E). The court summarized its prior Orders in the adversary proceeding B-Line commenced against the Credit Store, emphasizing that both of the Orders explicitly stated that the Credit Store has no legal interest in the accounts and that the accounts are not property of the Credit Store's bankruptcy estate. B-Line also claims ownership of the accounts in its complaint in the present adversary proceeding against the FDIC. Accordingly, the Bankruptcy Court concluded that, because the accounts were not a part of the Credit Store's bankruptcy estate, B-Line's adversary proceeding against the FDIC involving those accounts was not a core proceeding under 28 U.S.C. § 157(b)(2)(E) that would provide subject matter jurisdiction.

The second possibility for subject matter jurisdiction considered by the Bankruptcy Court was the catch all provision in 28 U.S.C. § 157(b)(2)(O). The court concluded, however, that B-Line had not pled facts supporting a finding that the outcome of the adversary proceeding against the

FDIC would affect either the liquidation of the assets of the Credit Store's bankruptcy estate or the adjustment of the debtor-creditor relationship in the Credit Store's bankruptcy case.

The third possible source for subject matter jurisdiction examined by the Bankruptcy Court was whether the adversary proceeding was a non-core, related proceeding pursuant to 28 U.S.C. §§ 157(b) or 1334(b). The court found that B-Line had not pled any facts to support a finding that any outcome in B-Line's adversary proceeding against the FDIC would either alter the Credit Store's rights, liabilities, options or freedom of action or in any way impact upon the handling and administration of the Credit Store's bankruptcy estate. Thus, the Bankruptcy Court held that B-Line's adversary proceeding against the FDIC was not a non-core, related proceeding and subject matter jurisdiction did not exist on that basis.

In this appeal, B-Line contends, and the FDIC does not dispute, that the Bankruptcy Court had subject matter jurisdiction to issue the permanent injunction in the Credit Store's bankruptcy case pursuant to 28 U.S.C. § 157(b)(2). The issue then becomes whether the Bankruptcy Court has subject matter jurisdiction to enforce the permanent injunction in the present adversary proceeding against the FDIC, who was appointed receiver for the Credit Store's secured creditor. B-Line contends the Bankruptcy Court has jurisdiction to enforce its permanent injunction and that its subject matter jurisdiction is derivative of the Credit Store's continuing Title 11, Chapter 7 proceeding. The crux of B-Line's argument regarding jurisdiction to enforce the injunction is that the FDIC is a successor in interest to the Credit Store. The FDIC admits that it is a successor in interest to Coast and Southern Pacific, but denies that it is a successor in interest to the Credit Store. B-Line further contends that the FDIC is barred by res judicata from attacking the injunction and that the FDIC violated federal law by failing to abide by the injunction. Finally, B-Line argues the Bankruptcy Court has jurisdiction because it is a court of equity.

The FDIC contends that the Bankruptcy Court correctly concluded it lacked subject matter jurisdiction. In situations where the FDIC is appointed a receiver, the FDIC contends that 12 U.S.C.



§ 1821(d)(13)(D)<sup>2</sup> strips all courts of jurisdiction over claims against the FDIC relating to its actions as receiver. In addition, the FDIC urges that injunctive relief is not available against the FDIC as receiver pursuant to 12 U.S.C. § 1821(j)<sup>3</sup>. Rather than pursuing this adversary proceeding, the FDIC contends B-Line could have sought a remedy through the administrative process provided in 12 U.S.C. § 1821.

### DISCUSSION

The question of whether a court has subject matter jurisdiction is a question of law. See Husmann v. Trans World Airlines, Inc., 169 F.3d 1151, 1152 (8<sup>th</sup> Cir. 1999). An appellate court reviews the bankruptcy court's conclusions of law de novo. See In re: Trism, Inc., 328 F.3d 1003, 1006 (8<sup>th</sup> Cir. 2003).

The Bankruptcy Court evaluated three options for subject matter jurisdiction in B-Line's adversary proceeding against the FDIC and found that none of those options provided jurisdiction. The Court agrees that B-Line's adversary proceeding against the FDIC is not a core proceeding, see 28 U.S.C. § 157(b)(2)(A-N), or a non-core, related proceeding, see 28 U.S.C. § 157(c)(1), and that it does not fall within the catch-all provision in 28 U.S.C. § 157(b)(2)(O).

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<sup>2</sup>12 U.S.C. § 1821(d)(13)(D) provides:

Except as otherwise provided in this subsection, no court shall have jurisdiction over

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such institution or the [FDIC] as receiver.

<sup>3</sup>12 U.S.C. § 1821(j) provides:

Except as provided in this section, no court may take any action except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the [FDIC] as conservator or receiver.

Citing 12 U.S.C. § 1821(d)(13)(A), B-Line contends that the FDIC must abide by the permanent injunction because it is a final unappealable judgment of a court of competent jurisdiction that was rendered before the appointment of the FDIC as receiver. That the FDIC may have violated the provisions of 12 U.S.C. § 1821(d)(13)(A), however, does not confer subject matter jurisdiction on the Bankruptcy Court.

B-Line argues that the Bankruptcy Court has jurisdiction in this adversary proceeding to enforce its own injunction. The primary flaw in B-Line's argument, however, is that the accounts B-Line desires to enforce the injunction against are not property of the Credit Store's bankruptcy estate. See 28 U.S.C. § 1334(e). Moreover, because the accounts are not property of the estate to which an automatic stay may have otherwise prevented the FDIC from seizing the funds, "the bankruptcy court, like any other court, is prevented from taking 'any action ... to restrain or affect the exercise of powers or functions of the [FDIC] as a conservator or receiver.'" Sunshine Development, Inc. v. FDIC, 33 F.3d 106, 114 (1<sup>st</sup> Cir. 1994) (quoting 12 U.S.C. § 1821(j)).

Another argument advanced by B-Line is that the FDIC may not collaterally attack the injunction issued by the Bankruptcy Court in the Credit Store's bankruptcy case. The FDIC, however, is not seeking to collaterally attack the Bankruptcy Court's permanent injunction. Rather, the FDIC maintains that the Bankruptcy Court does not have subject matter jurisdiction in the adversary proceeding to enforce the injunction against the FDIC, even if the injunction is valid against the Credit Store. If the FDIC was seeking to collaterally attack the injunction, it would not be barred by the principles of res judicata or collateral estoppel because the propriety of the FDIC's seizure of the accounts has not been litigated and resolved by a valid final judgment that would bind the FDIC in this adversary proceeding. See Canady v. Allstate Ins. Co., 282 F.3d 1005, 1014 (8<sup>th</sup> Cir. 2002) (stating that the test for whether the doctrine of res judicata bars litigation of a claim includes an examination of "whether (1) a court of competent jurisdiction rendered the prior judgment, (2) the prior judgment was a final judgment on the merits, (3) both cases involved the same cause of action and the same parties.").

The question of whether the Credit Store's deposits with Coast and Southern Pacific were special or general deposits cannot be resolved in this adversary proceeding unless the Bankruptcy Court has subject matter jurisdiction. The finding above that the Bankruptcy Court does not have subject matter jurisdiction precludes the court from resolving this issue.

As a final possibility, B-Line contends that the Bankruptcy Court is a court of equity that can enforce its own injunctions because it had jurisdiction to impose the injunction in the Credit Store's bankruptcy case. Equity itself, however, does not confer jurisdiction to the Bankruptcy Court, which must find a specific grant of subject matter jurisdiction.


### CONCLUSION

The Court finds that the Bankruptcy Court correctly ruled it lacked subject matter jurisdiction over B-Line's adversary proceeding against the FDIC and the decision will be affirmed. Accordingly,

IT IS ORDERED that the Bankruptcy Court's order dismissing B-Line's adversary proceeding against the Federal Deposit Insurance Corporation is affirmed.

Dated this 30<sup>th</sup> day of September, 2004.

BY THE COURT:

  
Lawrence L. Piersol  
Chief Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY:   
(SEAL) DEPUTY