

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

IN Re:) CASE NO. 386-00018
KENNETH J. HOFER,)
d/b/a Farmer,) CHAPTER 7
)
Debtor.) FINDINGS OF FACT
) AND CONCLUSIONS OF LAW

This action to enforce a settlement was tried to the Court on January 5, 1988. The Debtor alleges First National Bank (Bank) wrongfully withheld \$1,000.00 in wages owed to the Debtor under a personal services contract between these parties. Bank alleges the amount was rightfully withheld.

Having heard the testimony and review the exhibits, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

I.

The Debtor filed the Chapter 7 Petition on February 10, 1986.

II.

Prior to filing his Chapter 7 Petition the Debtor farmed in Hughes and Sully Counties of South Dakota.

III.

The Debtor was indebted to First National Bank at the time the bankruptcy petition was filed.

IV.

The parties' pleadings admit the following facts.

a. On February 7, 1986, the parties entered into an agreement which in part required the Debtor to file a chapter 7 Petition

b. Under the agreement, Bank was to pay the Debtor \$1,000 00 per month for personal services to be rendered March 1, 1986 through September 1, 1986.

c. The Bank refused to pay the final \$1,000.00 payment.

d. The Debtor performed the personal services after the commencement of the case and the \$1,000.00 payment would not be part of the bankruptcy estate.

e. Bank claims it is entitled to offset the \$1,000.00 payment because it paid bills incurred by the Debtor for which the Debtor was responsible under the parties' agreement, and because some services rendered by the Debtor were deficient under the contract.

U. This action was originally brought in a small claims proceeding in South Dakota Circuit Court (No. S.C. 87-171). At a July 20, 1987 hearing Magistrate Richard Wendt dismissed the case for lack of jurisdiction, concluding jurisdiction over the Debtor's action lie in this Court -

V.

The wages withheld were for services performed for the month of August, 1986.

VI.

This bankruptcy case is still being administered.

CONCLUSIONS OF LAW

I.

If the Debtor recovered the \$1,000.00 payment in question that money would not be property of the bankruptcy estate. 11. U.S.C. 541(a) (6).

II.

In the absence of a party's timely motion, a bankruptcy judge is required to determine whether the Bankruptcy Court possesses jurisdiction over a proceeding. 28 U.S.C. 157()(3).

III.

Except as provided in 28 U.S.C. 1334(b) Federal District Courts have "original and exclusive jurisdiction of all cases under title 11". 28 U.S.C. Section 1334(a).

IV.

Federal "district courts 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."

28 U.S.C. 1334(b).

V.

"Title 11" mentioned in these conclusions refers to 11 U.S.C. Sections 101 et seq.

VI.

23 U.S.C. 157(a) provides "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."

VII.

Federal District Court for the District of South Dakota has referred "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" to the bankruptcy judges of this District by an order of Chief Judge Andrew S. Bogue and entered August 6, 1984.

VIII.

If an action is not one "arising under title 11 or arising in or related to a case under title 11" within the meaning of the above cited statutes, a bankruptcy court does not have subject matter jurisdiction to decide that action.

IX.

The parties to an action may not confer subject matter jurisdiction on a bankruptcy court. See 28 U.S.C. 157(c).

X.

An action is one "arising under" Title 11 if it is based on a provision of Title 11. National City Bank V. Coopers and Lybrand, 802 F.2d 990 (8th Cir. 1986).

XI.

The Debtor's cause of action is entirely based upon state law and is not one which "arises under" Title 11.

XII.

The Debtor's action is not one "arising in Title 11 within the meaning of the above statutes. See 1 Collier on Bankruptcy. para. 3.01[v] (1987); 1 Norton Bankruptcy Law and Practice, Section 5.31 (1981).

XIII.

Every action in which a debtor in a pending bankruptcy case is a party is not an action "arising in" a bankruptcy case. Norton, supra.

XIV.

An action is "related to" a bankruptcy case within the meaning of the above statutes when

the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy

... An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action ... and which in any way impacts upon the handling and administration of the bankruptcy estate. National City Bank, 802 F.2d at 994 (emphasis in original) (quoting Pacor, Inc. V. Higgins, 743 F.2d 984 (3rd Cir1984)).

XV.

Whether or not the Debtor recovers the \$1,000.00 in dispute could not be reasonably conceived to have any effect on the Chapter 7 bankruptcy estate, or to alter Mr. Hofer's rights, liabilities, options, or freedom of action as a debtor in bankruptcy, or in any way to impact upon the handling and administration of his Chapter 7 estate- See In re Bobroft, 766 F2d 797 (3rd Cir. 1985). Compare In re Fleet, 53 B.R. 833 (Bkrtcy. E.D- Pa. 1985) (citing Bobroff); Funding Sys. Asset Mgt. Corp. V. 3-M Co., 72 B.R. 595 (W.D. Pa. 1987); In re Globe Parcel Service, Inc., 71 B.R- 323 (E.D. Pa. 1987) (Debtor's suit is related where recovery would increase assets of estate.

XVI.

The present action is too tangentially and tenuously linked to the Debtor's chapter 7 bankruptcy to be "related to" the bankruptcy case within the meaning of the above statutes. See Norton, supra, at p. 157, quoting Pacor, supra.

XVII.

This Court lacks subject matter jurisdiction to decide the action brought before it.

Counsel for Bank is requested to submit an order dismissing the Debtor's motion.

Dated this 17th day of May, 1988.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: _____
Deputy Clerk

(SEAL)