IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1448
Summary Calendar

IN THE MATTER OF: CARL A STERLING AND REGINA A. STERLING,

Debtors.

CARL H. STERLING & REGINA A. STERLING,

Appellants,

v.

THE FIRST INTERMARK, INC.,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:91 CV 1896 G)

(November 19, 1992)

Before GARWOOD, JONES, and EMILIO GARZA, Circuit Judges.[1]

EDITH H. JONES, Circuit Judge:

This appeal arises from the bankruptcy and district court judgments finding the debtors liable for a nondischargeable debt owed to the First Intermark under the Perishable Agricultural Commodities Act. Finding the creditor's claim barred by a previous state court suit, we reverse.

---

[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Carl and Regina Sterling were the owners and operators of Rocky's Produce, Inc., a corporation engaged in the business of buying and selling agricultural produce. The company fell upon hard times and filed a voluntary petition under Chapter 7 of the Bankruptcy Code in December 1989. In July, 1990 First Intermark and other creditors of Rocky's Produce agreed to a settlement of their claims against the estate, distributed the funds they were able to obtain from the liquidation, and released their claims against each other and the debtor, but reserved their rights under the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. § 499a et seq.

A month earlier, the First Intermark, Inc., sued the Sterlings in state court to enforce loan guarantees that the Sterlings had executed for the benefit of First Intermark. The state court suit resulted in a default judgment against the Sterlings, and in October 1990, the Sterlings filed for personal bankruptcy under Chapter 7. In the Sterlings' personal bankruptcy proceeding, First Intermark sought a judgment under the terms of the PACA statutory trust provisions and a declaration that these claims were nondischargeable under section 523(a)(4) of the Bankruptcy Code. The bankruptcy court granted summary judgment in favor of First Intermark, and the district court affirmed. On appeal, the Sterlings claim that the district court erred (1) in determining that the PACA trust claim was a "core proceeding" under 28 U.S.C. § 157, (2) in misinterpreting the settlement and release

provisions, and (3) in failing to apply the doctrine of claim preclusion.

The Sterlings' assertion that the PACA trust claim could not be determined by the bankruptcy court because it was not a core proceeding is incorrect. It is inconsistent with the Sterlings' Motion to Dismiss and Original Answer, which admitted that First Intermark's claims are a core proceeding under 28 U.S.C. § 157. In any event, the district court had power to hear and decide these claims. See In re Southland + Keystone, 132 B.R. 632, 638-39 (9th Cir. BAP 1991); see also John M. Himmelberg & Mitchell H. Stabbe, 1984 PACA Amendments After Six Years: Producing Sellers' Trust and Lenders' Disgust, 43 Ark. L. Rev. 523 (1990).

The Sterlings' claim that the bankruptcy court and the district court misinterpreted the provisions of the Compromise and Settlement Agreement is likewise unfounded. That document clearly provided that to the extent that First Intermark's PACA trust claims were not satisfied as a result of the settlement, First Intermark did "not release their respective rights to pursue and assert their respective PACA trust claims against any person or entity not a party to this Agreement, in order to obtain full and complete payment of such PACA trust claims." The Sterlings were not a party to this agreement. The bankruptcy court and the district court properly ruled that the Compromise and Settlement Agreement did not release the Sterlings from First Intermark's PACA trust claim.

The final issue is whether principles of res judicata barred the bankruptcy court from adjudicating First Intermark's PACA claim in the context of a nondischargeability adversary proceeding. By federal statute, the judicial proceedings of any court of any state shall have the same full faith and credit in every federal court as they have in the courts of the state from which they are taken. 28 U.S.C. § 1738. Therefore, a state court judgment has the same preclusive effect in federal court that the judgment would have in state court. Migra v. Warren City School District Board of Education, 465 U.S. 75, 81, 104 S. Ct. 892, 896, 79 L.Ed.2d 56 (1984). Consequently, we look to Texas law regarding claim preclusion to determine whether First Intermark's PACA suit would have been barred in Texas. In Texas, the doctrine of claim preclusion "prevents the relitigation of a claim or cause of action that has been finally adjudicated, as well as related matters that, with the use of diligence, should have been litigated in the prior suit." Barr v. Resolution Trust Corp., ____ S.W. 2d ____, 1992 W.L. 233648, at *1 (Tex. Sept. 23, 1992) (emphasis added); Gracia v. RC Cola-7-Up Bottling Co., 667 S.W.2d 517, 519 (Tex. 1984); Bonniwell v. Beech Aircraft Corp., 663 S.W.2d 816, 818 (Tex. 1984). For twenty years the Texas courts struggled for a satisfactory approach to claim preclusion. See Griffin v. Holiday Inns of America, 496 S.W.2d 535 (Tex. 1973) (precluding "issues of fact actually litigated and determined"); Westinghouse Credit Corp. v. Kownslar, 496 S.W.2d 531 (Tex. 1973) (adopting a pure policy approach); Texas Water Rights Comm'n v. Crow Iron Works, 582 S.W.2d

768 (Tex. 1979) (barring claims which "arise out of the same subject matter and which might have been litigated in the first suit"); Gracia, 667 S.W.2d at 519 (barring claims which arise out of the same set of facts and which could have been practicably litigated in the first lawsuit). In Barr v. Resolution Trust Corp., the Texas Supreme Court formally adopted the transactional approach and stated: "A subsequent suit will be barred if it arises out of the same subject matter of a previous suit and[,] through the exercise of diligence, could have been litigated in a prior suit." Barr, ____ S.W.2d at ____, 1992 W.L. 233648, at *4.

First Intermark does not argue that its PACA trust claim arose out of a different subject matter from the state court suit. Instead, First Intermark argues that it could not have maintained its PACA trust claim in the state court action "because state courts lack the requisite subject matter jurisdiction over such actions." First Intermark's assertion that its PACA trust claim was within the exclusive jurisdiction of the federal courts, if correct, would defeat the Sterling's assertion that the PACA trust claim was barred by the doctrine of claim preclusion. See e.g., Marrese v. American Academy of Orthopedic Surgeons, 470 U.S. 373, 382-83 & n.3, 105 S. Ct. 1327, 1333-34 & n.3, 84 L.Ed.2d 274 (1985). It is therefore necessary, in the absence of any supporting authority cited by First Intermark, to determine whether the Perishable Agricultural Commodities Act provides for exclusive federal jurisdiction.

It is axiomatic that under our federal system "the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremecy Clause." Tafflin v. Levitt, 493 U.S. 455, 458, 110 S. Ct. 792, 795, 107 L.Ed.2d 887 (1990). Under this system, the state courts have "inherent authority" and are "presumptively competent" to adjudicate claims arising under federal law. Tafflin, 493 U.S. at 458, 110 S. Ct. at 795; Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 477-78, 101 S. Ct. 2870, 2874-75, 69 L.Ed.2d 784 (1981); Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 507-08, 82 S. Ct. 519, 522-23, 7 L.Ed.2d 483 (1962). In Gulf Offshore, the Supreme Court stated

> In considering the propriety of state-court jurisdiction over any particular federal claim, the Court begins with the presumption that state courts enjoy concurrent jurisdiction. Congress, however, may confine jurisdiction to the federal courts either explicitly or implicitly. Thus, the presumption of concurrent jurisdiction can be rebutted by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests.

453 U.S. at 478, 101 S. Ct. at 2875 (citations omitted); see Claflin v. Houseman, 93 U.S. 130, 136-37, 23 L.Ed. 833 (1876) (stating that state courts have concurrent jurisdiction "where it is not excluded by express provision, or by incompatibility in its exercise arising from the nature of the particular case").

Because none of these factors are present with respect to the PACA trust claim brought by First Intermark, the Texas state courts retained their presumptive jurisdiction to adjudicate the

claim. Although the Act provides for federal jurisdiction, see 7 U.S.C. § 499e(c)(4), this jurisdictional grant is "permissive, not mandatory, for '[t]he statute does not state nor even suggest that such jurisdiction shall be exclusive.'" Tafflin, 493 U.S. at 460, 110 S. Ct. at 796 (quoting Dowd Box, 386 U.S. at 506, 82 S. Ct. at 522). Moreover, we find no implication from the legislative history that Congress intended to confer exclusive jurisdiction on the federal courts. See H.R. Rep. No. 543, 98th Cong., 2d Sess. (1984), reprinted in 1984 U.S.C.C.A.N. 405, 410. Nor do we find a clear incompatibility between state-court jurisdiction and federal interests. See Tafflin, 493 U.S. at 463-64, 110 S. Ct. at 797-98; Gulf Offshore, 453 U.S. at 483-84, 101 S. Ct. at 2877-78. Because First Intermark's PACA trust claim was not within the exclusive jurisdiction of the federal courts, it could have been brought in the state court action against the Sterlings. Consequently, under Texas law the PACA trust claim would be barred by claim preclusion in the Texas courts. First Intermark's PACA trust claim was, therefore, also barred in federal court.

For these reasons, the judgments of the district and bankruptcy courts are **REVERSED**.