UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3626

In the Matter of RUDOLPH A. MCLEOD,

Debtor,

RUDOLPH A. MCLEOD

Appellee,

versus

G. RAND SMITH,

Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 92 3080 L 5)

(July 14, 1994)

Before WISDOM and JONES, Circuit Judges, and COBB*, District Judge.

EDITH H. JONES, Circuit Judge:**

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* District Judge of the Eastern District of Texas, sitting by designation.

** 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

In June 1990, appellee Ralph McLeod, the owner of Gulf South Communications, Ltd., filed Chapter 11 bankruptcy in Louisiana. In March 1991, he filed an adversary proceeding in the bankruptcy court to collect on a promissory note that had been assigned to him by Gulf South Communications, Ltd. The promissory note had been executed in Florida by Westerville Broadcasting of Florida, Inc. and was guaranteed by several individuals, including the appellant G. Rand Smith. The defendants in the adversary proceeding raised various disputed affirmative defenses.

Following a trial on the merits, bankruptcy Judge T. H. Kingsmill, Jr. entered judgment in favor of McLeod finding Westerville Broadcasting and all of the guarantors jointly and solidarily liable to McLeod in the amount of $870,822.98 plus interest. On appeal, the district court concluded that the adversary proceeding was a core proceeding and, finding no clear error, affirmed the judgment of the bankruptcy court. Smith now appeals contending that the adversary proceeding was in fact a non-core proceeding which the district court should have reviewed de novo. We agree with Smith and accordingly vacate and remand to the district court.

DISCUSSION

The jurisdiction of bankruptcy courts is bifurcated between "core" and "non-core" proceedings. See 28 U.S.C. § 157. Bankruptcy courts may issue final judgments in all core proceedings, and on appeal the district court reviews appeals from

core proceedings for clear error. In non-core proceedings, the bankruptcy court is not empowered to issue final judgments, but rather is required to submit findings of fact and conclusions of law to the district court. The district court then conducts a de novo review of the proceedings and enters judgment accordingly.

Congress codified the distinction between core and non-core cases in 28 U.S.C. § 157 in response to the Supreme Court's decision in Northern Pipeline Constr. Co. v. Marathon Pipe Line Co, 458 U.S. 50, 102 S.Ct. 2858 (1982). Relying on Marathon, this court has concluded that "controversies that do not depend on the bankruptcy laws for their existence -- suits that could proceed in another court even in the absence of bankruptcy -- are not core proceedings." Wood v. Wood (In Re Wood), 825 F.2d 90, 96 (5th Cir. 1987).

> If the proceeding involves a right created by the federal bankruptcy law, it is a core proceeding; for example, an action by the trustee to avoid a preference. If the proceeding is one that would arise only in bankruptcy, it is also a core proceeding; for example, the filing of a proof of claim or an objection to the discharge of a particular debt. If the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding; it may be related to the bankruptcy because of its potential effect, but under section 157(c)(1) it is an "otherwise related" or non-core proceeding.

Id. at 97 (emphasis in original).

In ruling on McLeod's suit on the note, the district court improperly relied on Bank of Lafayette v. Baudoin (In Re Baudoin), 981 F.2d 736 (5th Cir. 1993), in concluding that his suit was a core proceeding. The relevant facts in Baudoin are that Mr.

and Mrs. Baudoin owned a corporation, RFBI, which received various loans from the Bank of Lafayette ("the bank"). Eventually, RFBI and the Baudoins, individually, filed for Chapter 7 bankruptcy. The Baudoins' bankruptcies were eventually consolidated. During RFBI's bankruptcy, the bank filed a proof of claim. During the Baudoins' bankruptcy, the bank did not file a proof of claim, but instead bid in two mortgages that the bank held to purchase the Baudoins' property sold during their bankruptcy. Three years after their discharge in bankruptcy, the Baudoins sought to bring a lender liability action in state court against the bank. The issue before the Baudoin court was whether the Baudoins' lender liability suit against the bank three years after discharge was barred by res judicata.

The court concluded that the suit was barred by principles of res judicata because the Baudoins sought to sue the very bank that they claimed forced them into bankruptcy years ago. In reaching its decision that the action was barred by res judicata, the court concluded that the lender liability action was a core proceeding in the Baudoins' bankruptcy for two reasons: (1) regarding the RFBI bankruptcy, the action would have been a core proceeding under 28 U.S.C. § 157(b)(2)(C)[1] because of the proof of claim that bank had filed against RFBI and (2) regarding the Baudoins' personal bankruptcy, the action would

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[1] 28 U.S.C. § 157(b)(2)(C) provides, in relevant part:

Core proceedings include . . . counterclaims by the estate against persons filing claims against the estate.

have been a core proceeding under 28 U.S.C. § 157(b)(2)(O)[2] because the Baudoins should have objected to the bank's purchase of their property by trading in its mortgages. See id. at 741-42. In reaching its conclusion, the Baudoin court acknowledged that although § 157(b)(2)(O) is to be narrowly construed, the facts before it fit within the ambit of this subsection because of the tremendous effect the lender liability suit would have had on the liquidation of assets and the debtor-creditor relationship during the bankruptcy. See id. at 742.

McLeod's action on the note in this case is distinguishable from Baudoin and more akin to cases such as Marathon and Wood. This case clearly falls within the definition supplied by the Wood court, discussed supra, in discerning the difference between core and non-core proceedings. McLeod's collection suit had nothing to do with his bankruptcy case except for the happenstance that the creditor was in bankruptcy.

CONCLUSION

The district court erred in determining that McLeod's suit on the promissory note was a core proceeding and as a result, it applied an incorrect standard of review -- clearly erroneous. After reviewing the record, we are unable to affirm on any alternate ground involving the merits. For these reasons, we

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[2] 28 U.S.C. § 157(b)(2)(O) provides, in relevant part:

Core proceedings include . . . other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

VACATE the judgment of the district court and **REMAND** for de novo review with final judgment to be entered by the district court.

VACATED and **REMANDED** to the district court.