

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-8023
Summary Calendar

DONALD JACK MANNING,

Plaintiff-Appellant,

VERSUS

FARMERS HOME ADMINISTRATION,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas

(W 92 CV 12)

(August 23, 1993)

Before HIGGINBOTHAM, SMITH, DeMOSS, Circuit Judges

DeMOSS, Circuit Judge:*

I. FACTS AND PROCEDURAL HISTORY

In 1981, the Farmers Home Administration (FHA) loaned Donald Jack Manning \$312,000 pursuant to the Emergency Agricultural Credit Adjustment Act of 1978. On April 1, 1985, Manning filed a petition

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

for relief under Chapter 11 of the Bankruptcy Code. In an adversary proceeding in the Bankruptcy case, Manning recovered a judgment of almost \$450,000 against the FHA after the bankruptcy court held the FHA caused Manning damage in excess of the loan amount. Manning's reorganization plan was confirmed on May 31, 1991.

Manning eventually returned to the FHA to seek an additional loan, which the FHA denied. Because of the FHA's refusal to loan him monies, Manning claims to have lost assets and value in his business.

In January 1992, Manning sued the FHA alleging a violation of 11 U.S.C. § 525.¹ He argued the FHA discriminated against him because he was a debtor in bankruptcy. In response, the FHA moved to dismiss for lack of subject matter jurisdiction claiming the doctrine of sovereign immunity made it immune from liability. Initially, the district court denied the motion holding that 11

¹ 11 U.S.C. § 525(a) provides:

a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

11 U.S.C. § 525(a).

U.S.C. § 106(c)² waived the FHA's claim of sovereign immunity.

In November 1992, the FHA moved the district court to reconsider its Motion to Dismiss. The basis of this motion was the United States Supreme Court decision in United States v. Nordic Village, Inc., ___ U.S., ___, 112 S.Ct. 1011, 117 L.Ed.2d 181 (1992), in which the Court held that 11 U.S.C. § 106(c) is not a waiver of sovereign immunity for actions seeking monetary relief. The district court granted the FHA's motion and entered a judgment dismissing the case in January 1993. Manning timely appealed.

II. DISCUSSION

The district court dismissed the case on the ground of sovereign immunity, which is a dismissal for lack of subject matter jurisdiction. Capozzoli v. Tracey, 663 F.2d 654 (5th Cir. 1981). This court reviews a dismissal for lack of subject matter

² 11 U.S.C. § 106 states:

(a) A governmental unit is deemed to have waived sovereign immunity with respect to any claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which such governmental unit's claim arose.

(b) There shall be offset against an allowed claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

(c) Except as provided in subsections (a) and (b) of this section and notwithstanding any assertion of sovereign immunity--

(1) a provision of this title that contains "creditor", "entity", or "governmental unit" applies to governmental units; and

(2) a determination by the court of an issue arising under such a provision binds governmental units.

11 U.S.C. § 106.

jurisdiction *de novo*. Hospital Bldg. Co. v. Trustees of Rex Hosp., 425 U.S. 738, 742 n. 1 (1976); Benton v. United States, 960 F.2d 19 (5th Cir. 1992).

In United States v. Nordic Village, Inc., ___ U.S. ___, 112 S.Ct 1011, 117 L.Ed.2d 181 (1992), an officer of a corporation in bankruptcy drew a \$26,000 check on the company's corporate account and paid \$20,000 of the funds to the IRS with directions for the IRS to apply it against his individual tax liability. After learning of this, the trustee of the corporation commenced an adversary proceeding in bankruptcy court against the IRS seeking a judgment in the amount of \$20,000, which the bankruptcy court granted. On appeal, the Supreme Court held that section 106(c) did not waive sovereign immunity in so far as a claimant seeks monetary, not declaratory or injunctive relief, and therefore it barred the judgment. In reaching its decision, the Court relied on the fundamental rule that waivers of governmental immunity must be "unequivocally expressed," Nordic Village, 112 S.Ct. at 1014, (quoting Irwin v. Department of Veterans Affairs, 498 U.S. 89 (1990)), and should not be liberally construed. Nordic Village, 112 S.Ct. at 1014.

In spite of the Court's holding in Nordic Village, Manning argues that a waiver of immunity is necessary to provide a remedy for the substantive rights defined within section 525, and he relies on Exquisito Services, Inc. v. United States, 823 F.2d 151 (5th Cir. 1987) as support for his argument.

Manning's reliance on Exquisito Services is sorely misplaced.

In that case, this court found that the Air Force's refusal to renew a government food service contract with debtor-in-possession, Exquisito Services, violated section 525. However, Exquisito Services only sought equitable, not monetary relief. Just as important, this court did not address whether section 106(c) provided a blanket waiver of sovereign immunity, and we decided the case before the Supreme Court issued its decision in Nordic Village.

In short, Manning's proposed construction of section 106 violates the Court's holding in Nordic Village and consequently we reject it.

III. CONCLUSION

Because we find Nordic Village squarely controls the issue in this case, we AFFIRM the decision of the district court.