

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8180
(Summary Calendar)

In the Matter of:
PEDERNALES PETROLEUM CORPORATION,
Debtor,

THOMAS H. HOOD, DR. O.N. WINNIFORD
and FRANK S. MCGEE,
Appellants,

versus

AMARILLO NATIONAL BANK and
U.S. TRUSTEE,
Appellees.

Appeal from the United States District Court
for the Western District of Texas
(SA-90-CA-73)

(July 9, 1993)

BEFORE KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:*

In this bankruptcy case, Appellants Thomas Hood, Dr. O.N. Winniford, and Frank S. McGee appeal the bankruptcy court's dismissal of adversary proceedings against Appellee Amarillo

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

National Bank (the Bank). Appellants insist that the U.S. Trustee (the Trustee) abused its discretion by not pursuing the claim against the Bank and that the district court erred in affirming the dismissal. As we find no abuse of discretion, we affirm.

I

FACTS

Appellants, principal stockholders of the debtor corporation and guarantors of its loan from the Bank, contest the Trustee's agreement with the Bank, in which the Trustee abandoned the secured property to the Bank, the Bank waived its claim for the deficiency on the debt, and the Trustee waived any potential claims against the Bank. As a result of the agreement, the Trustee and the Bank filed a joint motion to dismiss the proceeding against the Bank. Appellants responded with a motion to compel the Trustee to act. The bankruptcy court granted the joint motion to dismiss and denied the Appellants' motion to compel the Trustee to act.

On appeal, the district court considered Appellants' argument that the Trustee had abused its discretion because it did not conduct an investigation into the facts and circumstances surrounding the adversary proceedings. This, Appellants insisted, was a breach of the Trustee's fiduciary duties to the unsecured creditors and therefore an abuse of discretion. The district court rejected Appellants' arguments, noting the considerable discretion vested in the bankruptcy Trustee in determining whether to pursue litigation. Moreover, the court noted that Appellants submitted no evidence to suggest that an investigation was not conducted.

Consequently, the district court affirmed the bankruptcy court's dismissal. Appellants timely appealed.

II

ANALYSIS

A. Standard of Review

A Chapter 7 trustee in bankruptcy has wide discretion in carrying out his duties¹ and is not required to pursue each cause of action available.² The district court reviews for clear error the bankruptcy court's determination that the Trustee did not abuse its discretion. We, in turn, review such determination by the district court under the same standard. On appeal of bankruptcy cases, reviewing courts must accept the findings of fact of the bankruptcy court unless they are clearly erroneous.³ Circuit courts are guided by the rule that "[s]trict application of the clearly erroneous rule is particularly important whe[n] the district court has affirmed the bankruptcy court's findings."⁴

B. Trustee's Discretion

A trustee has control over claims of the bankrupt estate and is not required to pursue each cause of action available.⁵ In determining whether to pursue a claim, the trustee may consider

¹ Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985).

² Meyer v. Fleming, 327 U.S. 161, 168 (1946).

³ In re Missionary Baptist Found. of America, 818 F.2d 1135, 1142 (5th Cir. 1987).

⁴ Id.

⁵ Meyer, 327 U.S. at 168.

several factors, including (1) the merits of the possible action, (2) the likelihood of prevailing, (3) the litigation costs to the estate, and (4) the ultimate net benefit to the estate.⁶ In making its decision and considering these factors, a trustee has the duty to exercise the measure of care and diligence that an ordinary prudent person would exercise in similar circumstances. In addition, the trustee should attempt to conserve the assets of the estate and maximize distribution among the creditors.⁷

Appellants assert that the Trustee failed to conduct an investigation of the claims against the bank. They provide no support for this allegation and the record indicates that an investigation was in fact conducted. In the joint motion to dismiss, the Trustee and the Bank state:

Trustee of the bankruptcy estate of Debtor, PEDERNALES PETROLEUM CORPORATION, has made investigation of the facts and circumstances surrounding the above-entitled and numbered Adversary Proceeding and has determined that pursuit of said Adversary Proceeding would be unduly burdensome to the estate and that it lacks merit to the extent that it is of inconsequential value and benefit to the estate.

Additionally, Appellants concede that the Trustee accepted testimony from Appellant Hood at a creditor's meeting regarding his claims.

Based on this information, the bankruptcy court did not clearly err in finding no abuse of discretion by the Trustee. It follows that the district court did not clearly err in affirming

⁶ In The Matter of Sinder, 102 B.R. 978, 984 (Bankr. S.D. Ohio 1989).

⁷ Id.

the bankruptcy court.

The judgment of the district court is, therefore,
AFFIRMED.