

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60572
Summary Calendar

IN THE MATTER OF: JAMES R. SNYDER, JR. Debtor,

JAMES R. SNYDER JR.,

Appellant,

VERSUS

SOCIETY BANK OF ANN ARBOR, MICHIGAN,

Appellee.

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

(93-CV-320)

(April 12, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

Per curiam:*

Appellant James R. Snyder, Jr. (Snyder) appeals the order of the district court, which affirmed the bankruptcy court's decision not to compel the disclosure of documents from and not to impose

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

sanctions against Appellee, Society Bank of Ann Arbor, Michigan (Society Bank). We affirm.

FACTS

This dispute arose in the context of Snyder's bankruptcy proceeding. Society Bank had served as the principle bank for Snyder's company, Phoenix Masonry, Inc. On November 15, 1990 Snyder served a subpoena on Society Bank requesting certain documents. On December 18, 1990 Society Bank provided some of those documents to Snyder in response to the subpoena. Additional documents were provided to Snyder on January 10, 1991 and May 30, 1991. Snyder contended that the majority of the documents sought remained unaccounted for, and after negotiations broke down in October 1992, he filed a motion seeking sanctions against Society Bank. On October 31, 1991, Snyder and Phoenix Masonry, Inc. also filed a state court action against Society Bank.

On April 12, 1993, the bankruptcy court entered an order denying the motion for sanctions, finding the discovery request was moot and Society Bank's actions were not sanctionable. On appeal, the district court affirmed the bankruptcy court's order.

DISCUSSION

In reviewing a bankruptcy court's decision, a district court functions as an appellate court and applies the standards of review applied in federal courts of appeal. *In re Webb*, 954 F.2d 1102, 1103-04 (5th Cir. 1992). A bankruptcy court's finding of fact are reviewed under the clearly erroneous standard and its conclusions of law are reviewed *de novo*. R. BANKR. P. 8013. This Court must

determine whether the district court erred in applying the clearly erroneous standard in conducting its review of the bankruptcy court's findings of fact. *In re Webb*, 954 F.2d at 1104.

In determining whether to impose sanctions in a discovery dispute, the bankruptcy court has considerable discretion.¹ We must determine whether the district court appropriately applied an abuse of discretion standard in reviewing the bankruptcy court's decision.

Snyder has relied on four separate arguments to support his document request at various times throughout this dispute. First, Snyder issued the subpoena requesting a Rule 2004 examination, the purpose of which is to "show the condition of the estate and to enable the court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditor may be preserved." *Cameron v. United States*, 231 U.S. 710, 34 S.Ct. 244, 246, 58 L.Ed. 448 (1914). Rule 2004 affords both debtors and creditors broad rights of examination of a third-party's records. *Id.* Nevertheless, its scope is not limitless. Examinations cannot be used to harass or oppress the party. *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 516 (E.D.N.Y. 1991). Examination under Rule 2004 should not be used to obtain information for use in an unrelated case or proceeding pending before another tribunal. *Id.* The district court found that Snyder's primary motive for seeking the documents in question was for use in its state court litigation

¹ FED. R. CIV. P. 37(b)(2). Rule 37(b)(2) is made applicable to proceedings in bankruptcy by R. BANKR. P. 7037.

against the bank, and that the bankruptcy court's denial of production in light of that motive was not an abuse of discretion. The district court also found that the use of Rule 2004 instead of state discovery rules to further the state court litigation constituted an abuse of Rule 2004. We agree with the district court that Snyder's reliance on Rule 2004 was misplaced.

Although Snyder denied during negotiations that he wanted the documents to use against Society Bank, he contends on appeal that his state court lawsuit against the bank is a "totally valid independent bankruptcy reason for the discovery." Snyder is in a confirmed bankruptcy Plan which he anticipated funding in part with proceeds from the state court lawsuit against Society. He characterizes the documents as "essential to successful reorganization," in that success in the state court lawsuit will increase the amount of money available to him and thereby increase the probability that he can live up to his obligations under the Plan. This argument fails, first, because Snyder never asked the bankruptcy court to compel discovery for his potential or actual litigation against Society Bank; in fact he denied that was his motive. Second, use of Rule 2004 discovery to circumvent discovery limitations in state court proceedings is an abuse of Rule 2004. *Coffee Cupboard*, at 516.

Snyder also argues in this appeal, as he did between the time the subpoena was issued and the time he filed his motion for sanctions, that he needed the documents for use in a dispute with the Internal Revenue Service (IRS). The IRS conceded both the

documents' existence and their contents, but argued that notwithstanding the facts contained in the documents, they were entitled to summary judgment as a matter of law. The bankruptcy court agreed and granted summary judgment to the IRS. Snyder's motion for reconsideration of the summary judgment in favor of the IRS was heard at the same time as his motion for sanctions against Society Bank. The bankruptcy court found that Snyder's discovery request was moot and that Society Bank's actions were not sanctionable. The district court agreed with the bankruptcy court that the summary judgment in favor of the IRS, which had by that time been affirmed in a companion appeal to the district court, rendered the discovery issues moot. We agree.

Finally, Snyder argues that Society Bank is estopped from withholding the documents and must not be "rewarded" by prevailing on the discovery dispute and avoiding sanctions because it initially complied to some extent with the subpoena, did not make objection to it until later in the proceeding, and prior to the filing of the state court litigation had agreed to turn over some of the disputed documents. Snyder cites no authority for the proposition that Society Bank is "estopped" by these actions from objecting to the discovery request, and we are aware of none. The district court held that any agreement between the two parties that would have created a right of estoppel was breached when Snyder filed the state court suit. We agree.

For the foregoing reasons we AFFIRM the district court's decision which affirmed the bankruptcy court's order denying

Snyder's motion to compel and motion for sanctions.