

1983

Claron D. Bailey v. Deseret Federal Savings And Loan Association : Brief of Appellant

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IN THE SUPREME COURT
OF THE STATE OF UTAH

CLARON D. BAILEY,)	
)	
Plaintiff-Respondent,)	
)	
v.)	
)	Case No. 18961
DESERET FEDERAL SAVINGS AND)	
LOAN ASSOCIATION,)	
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT
COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH,
THE HONORABLE HOMER F. WILKINSON, PRESIDING

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BRIEF OF APPELLANT

STATEMENT OF CASE

Pursuant to a Complaint filed with a District Court, the Plaintiff-Respondent Claron D. Bailey sought monetary damages against the Defendant-Appellant Deseret Federal Savings and Loan Association. The Plaintiff-Respondent alleged that he was entitled to damages by reason of Utah's Deed of Trust Statute, U.C.A. §§57-1-19, et. seq., (1953 as amended). The case was tried before a District Court.

DISPOSITION IN LOWER COURT

This matter was tried, without a jury, before the Honorable Homer F. Wilkinser of the Third Judicial District Court, on the 1st and 2nd days of July, 1982. After the close of the evidence and the submitting of legal memoranda

by both parties, the Court entered its Memorandum Decision on July 30, 1982. On January 7, 1983, the Court entered its Findings of Fact, Conclusions of Law, and Judgment awarding to Plaintiff and against Defendant the total sum of Two Thousand Five Hundred Ninety-Five Dollars and Sixty-Six Cents (\$2,595.66).

RELIEF SOUGHT ON APPEAL

Deseret Federal Savings and Loan Association seeks a reversal of the Judgment against it.

STATEMENT OF FACTS

The Defendant-Appellant Deseret Federal Savings and Loan Association (hereinafter referred to as "Deseret Federal") is a federally chartered savings and loan association with its principal place of business in Salt Lake City, Utah. (R.2.) On April 28, 1977, Deseret Federal recorded at the Salt Lake County Recorder's Office its Deed of Trust under which Mr. William S. Radmall, Jr. and Mrs. Ruth Radmall (hereinafter referred to as the "Radmall's"), as trustors, conveyed to Deseret Federal, as trustee and beneficiary, real property located in Salt Lake County (hereinafter referred to as the "Radmall's' real property") for the purposes of securing an obligation in the principal amount of \$45,200.00. (R.2-3 and Plaintiff's Exhibit No. 3.)

Subsequent to Deseret Federal's recording of its Deed of Trust, the Plaintiff-Respondent Claron D. Bailey (hereinafter referred to as "Bailey") recorded his Notice of Lien on the subject real property because he apparently had not been paid for dry wall materials supplied to said property. Further, the Radmalls, as trustors, conveyed a second Deed of Trust on the subject real property to Commonwealth Land Title Insurance Company, as trustee, and Ivoy and Company, as beneficiary, for the purposes of securing an obligation in the amount of \$4,545.00. Said beneficial interest was later assigned to Bailey. (R.3 and Plaintiff's Exhibit No. 6.) Thus, as a result of the above described transactions, Deseret Federal held a secured first lien on the Radmall property and Bailey had a secured second lien on the same property. (R.123-125.)

In February of 1978, the Radmalls defaulted in their obligation secured by Deseret Federal's Deed of Trust. Thus, Deseret Federal recorded on August 18, 1978, at the Office of the Salt Lake County Recorder, its Notice of Default and Election to Sell. (R.3 and Plaintiff's Exhibit No. 9.) However, before Deseret Federal could conduct its trustee's sale on the subject property, the Radmalls filed a Voluntary Petition in Bankruptcy, Case No. 78-01047, in the U.S. District Court of Utah, on October 24, 1978. (R.3 and 29.)

With the filing of the Bankruptcy Petition, Deseret Federal pursued its remedies in Bankruptcy Court. On May 9,

1979, a Complaint in Reclamation was filed by Deseret Federal in Bankruptcy Court seeking an order of that Court to allow Deseret Federal to proceed with its trustee's sale of the Radmalls' property. (R.29-39.) A trial on Deseret Federal's Complaint in Reclamation was held on August 13, 1979. At the trial, the Bankruptcy Court entered an Order and Judgment which read in pertinent part as follows:

That the relief sought in the Complaint by Deseret Federal Savings and Loan Association is granted and said Association may proceed to Trustee's sale on the real property described in the Complaint herein pursuant to the laws of the State of Utah. In the event that Deseret Federal Savings and Loan Association should be the successful bidder at the Trustee's sale, and shall acquire title to part or all of the real property herein, free of other liens, then the property so acquired shall be offered for sale by the Association in a commercially reasonable manner and in the event that the sum in excess of that necessary to fully satisfy the note, trust deed, interest, costs and attorney's fees is realized upon sale, such excess shall be paid over to the Court for further disposition. (R.40-41.)

Pursuant to the above quoted Order of the Bankruptcy Court, Deseret Federal scheduled its trustee's sale on the Radmalls' property for November 9, 1979, at 10:00 a.m. The sale was conducted at that time, and Deseret Federal made the only bid in the amount of \$48,974.14, that figure representing the entire amount due and owing to it. (R.122-123 and Plaintiff's Exhibit No. 6.)

Just prior to the above described trustee's sale, Bailey filed a Verified Complaint in Bankruptcy Court against Deseret Federal seeking the following forms of relief:

1. A Declaratory Judgment having Deseret Federal's Deed of Trust on the Radmalls' property declared void;

2. A Declaratory Judgment ordering Deseret Federal to allow Bailey to bring Radmalls' default obligation current once the Court had determined the amount necessary to bring said obligation current;

3. An Order requiring the Bankruptcy Trustee to abandon the Radmalls' property;

4. An Order enjoining Deseret Federal's trustee's sale on the Radmalls' property; and

5. A Judgment against Deseret Federal for wrongfully disbursing funds in connection with the Radmalls' obligation. (R.43-53.)

In response to Bailey's Verified Complaint, Deseret Federal filed with the Bankruptcy Court its Motion to Dismiss the Verified Complaint upon the grounds that it failed to state a claim upon which relief can be granted. (R.54.) A hearing was held on Deseret Federal's Motion on November 13, 1979. The Bankruptcy Court, after hearing argument, granted Deseret Federal's Motion. (R.55.)

Approximately one week after the Bankruptcy Court dismissed Bailey's Verified Complaint, Bailey filed a Complaint with the Third Judicial District Court against Deseret Federal. That Complaint sought the following forms of relief:

1. A Declaratory Judgment seeking to void Deseret Federal's Deed of Trust on the Radmalls' property and pay

the proceeds of the trustee's sale in such order as the Court shall determine;

2. An Order requiring Deseret Federal to pay the proceeds of the trustee's sale in such an order as the Court shall determine;

3. A Judgment against Deseret Federal for wrongfully disbursing funds in connection with the Radmalls' obligation; and

4. A Judgment against Deseret Federal for Bailey's damages on the basis of strict liability. (R.2-5.)

Deseret Federal filed an Answer to Bailey's Complaint. (R.9-10.) Thereafter, Deseret Federal filed its Motion for Summary Judgment. The thrust of the Motion for Summary Judgment was that the Bankruptcy Court's dismissal of Bailey's Verified Complaint was res judicata upon the filing of his Complaint in District Court. (R.17-23.) In support of Deseret Federal's Motion for Summary Judgment, it relied upon a series of certified documents from Bankruptcy Court. (R.25-55.) In opposition to Deseret Federal's Motion, Bailey relied upon an affidavit of his own attorney. (R.62-65.) On March 19, 1981, the Honorable James Sawaya, one of the judges of the Third Judicial District Court, heard Deseret Federal's Motion. After taking the matter under advisement, the Court ruled that the Bankruptcy Court's dismissal was not res judicata upon Bailey and, thus, denied Deseret Federal's Motion. (R.67-69.)

The matter was tried before the Honorable Homer F. Wilkinson, one of the judges of the Third Judicial District Court, sitting without jury, on July 1 and 2, 1982. (R. 89-91.) The Court entered into Findings of Fact, Conclusions of Law and Judgment on January 7, 1983. (R. 115-116 and 122-125.) On January 18, 1983, Deseret Federal filed its Notice of Appeal. (R.133-134.)

ARGUMENT

POINT I: THE BANKRUPTCY COURT'S DISMISSAL OF RESPONDENT'S VERIFIED COMPLAINT IS RES JUDICATA UPON THE RESPONDENT FILING THE COMPLAINT IN DISTRICT COURT.

Deseret Federal has maintained through the litigation that Bailey's Complaint filed in State Court was barred by reason of the doctrine of res judicata. This Court's leading case on the doctrine is Krofcheck v. Downey State Bank, 580 P. 2d 243 (Utah, 1978). In that case, this Court held:

The doctrine of res judicata will bar a subsequent action if the following requirements are met: (1) the two cases must be between the same parties or their privies; (2) there must have been a final judgment on the merits of the prior case; and (3) the prior adjudication must have involved the same issue or an issue that could or should have been raised therein. (580 P. 2d at 249.)

When applying this three point test to facts presently before the Court, it is apparent that the District Court erred when it failed to grant Deseret Federal's Motion for Summary Judgment.

First, it is not disputed that both the Verified Complaint filed with the Bankruptcy Court and the Complaint filed with the District Court involve the same parties. Bailey is the Plaintiff in both actions. Deseret Federal is the Defendant in both actions.

Second, there was a final determination on the merits in the prior case. After the Verified Complaint had been filed with the Bankruptcy Court, Deseret Federal made a Motion to Dismiss pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure. The Bankruptcy Court granted the motion and ordered a dismissal of the Verified Complaint. Such a dismissal is a final adjudication upon the merits. Rule 41(b), Federal Rules of Civil Procedure.

Third, the dismissal of Verified Complaint by the Bankruptcy Court involved the same issues that were raised again by Bailey before the District Court. When both Complaints are compared, their similarities are striking. The gravamen of both Complaints is that Deseret Federal had violated U.C.A. §§57-1-19, et. seq. (1953 as amended), and, therefore, Bailey was entitled to one of a series of alternative reliefs. Had a court granted Bailey any of the relief he sought in either complaint, the result would have been the same; Deseret Federal would have to pay money to Bailey because of Deseret Federal's secured position with respect to Radmalls' real property.

Not one relevant factual circumstance had changed from the date the Bankruptcy Court dismissed the Verified

Complaint to the date Failey filed his Complaint with the District Court. Bailey was using the same facts in both actions to challenge the validity of Deseret Federal's secured obligation. Bailey was using similar facts in both actions to challenge Deseret Federal's conducting of the trustee's sale.

Finally, a review of the District Court's Findings of Fact and Conclusions of Law reveals that virtually every issue addressed by the District Court in its final determination was either directly or implicitly raised by Bailey in his Verified Complaint before the Bankruptcy Court. In so doing, the District Court refused to grant any import to the Bankruptcy Court's dismissal with prejudice of Bailey's prior Complaint.

It has long been established that the normal rules of res judicata apply to the decisions of a Bankruptcy Court. Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 60 S. Ct. 317 (1940). Additionally, a state court's recognition of the finality of a decision of a bankruptcy court is a matter of comity. It is certainly not in the best interest of the State of Utah to have the bankruptcy courts relitigate matters that our courts have already decided. Since the Bankruptcy Court's dismissal of the Verified Complaint was final and on the merits and since the Verified Complaint involved the same issue or issues that could have been raised in Bankruptcy Court, the District Court erred when it denied Deseret Federal's Motion for Summary Judgment.

Article I, Section 8 of the United States Constitution grants to Congress the power to establish "uniform laws on the subject of bankruptcies throughout the United States." This was Congress' anticipated bankruptcy courts to preempt any state subject matter jurisdiction in the area of bankruptcy. By adopting the Bankruptcy Reform Act of 1978 (11 U.S.C. §§111 et. seq.), Congress granted to the U.S. Bankruptcy Courts broad subject matter jurisdiction over matters which, prior to the Act, had been within the exclusive jurisdiction of the U.S. District Courts or state courts of general jurisdiction.* It has been Counsel Federal's position, throughout the litigation on this matter, that the Bankruptcy Court has exclusive subject matter jurisdiction over any proceeds of the trustee's sale of the Radwalle's property. This position is based upon the jurisdiction grants contained in the Bankruptcy Reform Act of 1978 which amended Title 11 of the U.S. Code.

The basis of Bankruptcy Court jurisdiction is 11 U.S.C. §111. That section reads in pertinent part:

*The United States Supreme Court has recently raised constitutional questions concerning Congress's broad grant of jurisdiction to the Bankruptcy Courts. However, the effect of said ruling was stayed until December 31, 1981. See Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 102 S. Ct. 1335 (1981). Thus, the U.S. Bankruptcy Court had all its jurisdictional powers during the relevant times involved in this matter.

(e) The bankruptcy court in which a case under Title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case.

Commenting on the above, Collier on Bankruptcy states: "Thus section 1471(e) grants to the Bankruptcy Court the broadest jurisdiction possible over the property of the debtor." 1 Collier on Bankruptcy ¶3.01(g) at 3-56 (15th Ed. 1983).

Because of Section 1471(e), it has not been in dispute between the parties that the moment the Radmalls filed their Petition for Voluntary Bankruptcy the real property in which both Deseret Federal and Bailey claimed a secured interest was within the jurisdiction of the Bankruptcy Court. Deseret Federal recognized this jurisdiction when it filed its Complaint of Reclamation with the Bankruptcy Court. Bailey recognized the jurisdiction when he filed his Verified Complaint. What Deseret Federal maintained in District Court, and now maintains on appeal, is that the Bankruptcy Court's exclusive jurisdiction is not only over the Radmall's real property but also over any proceeds which may result by reason of a foreclosure sale of that real property. Deseret Federal's position in this regard is not only in keeping with the broad wording of Section 1471(e), but is also consistent with complimentary sections of the Bankruptcy Reform Act of 1978 and legal interpretations of that Act.

Congress granted to the Bankruptcy Court certain discretion to refuse jurisdiction over some subject matters.

This discretionary jurisdiction is defined in 28 U.S.C. §1471(d). However, 28 U.S.C. §1471(e) was excluded from those matters over which the Bankruptcy Court can exercise such discretion. Norton Bankruptcy Law and Practice comments on the relationship between §1471(d) and §1471(e) as follows:

. . . it should be noted that there is no authority under this section [1471(d)] to abstain from an entire bankruptcy case, or to abstain from the exercise of exclusive jurisdiction over property. In this latter context, however, there is no apparent intent to reverse prior law under which a bankruptcy court could permit state foreclosure proceeding to continue in appropriate cases. Such a result should occur by granting relief from the automatic stay, rather than by way of abstention under this section [1471(d)]. 1 Norton Bankruptcy Law and Practice, §5.09 at 12 (1981).

The automatic stay, which is referred to above and which would have to be terminated in order for a state court to assume jurisdiction over the debtor's property, is the result of 11 U.S.C. §362(a). Generally, upon the filing of a petition in bankruptcy, all creditors are enjoined by that section from proceeding against a debtor or the debtor's property. However, a creditor is not without remedy. In an appropriate situation, a creditor may under 11 U.S.C. §362(d) seek to have the automatic stay either terminated, annulled, modified, or conditioned.

Deseret Federal did seek such relief from the automatic stay in the Radmalls' bankruptcy when it filed its Complaint in Reclamation with the Bankruptcy Court. However, the Bankruptcy Court did not terminate the automatic stay as it affected the Radmalls' property; instead the Bankruptcy

Court modified the automatic stay to allow Deseret Federal to proceed with a non-judicial foreclosure of the real property, and should said sale or resale by Deseret Federal result in excess proceeds above Deseret Federal's lien, those proceeds would be paid into the Bankruptcy Court. (R.40-41.)

A modified lifting of the automatic stay by a Bankruptcy Court so that it may retain control over the proceeds of a trustee's sale is certainly consistent with that Court's exclusive jurisdiction over property of the debtor. In the matter now before this Court, there were numerous secured claims against the Radmalls' real property. Deseret Federal alleged that it held the largest and the first priority over all secured claims. Bailey, in his Complaint in District Court, alleged that he held three separate claims on the property and that they were superior in interest to that of Deseret Federal. If a Bankruptcy Court is to fulfill its responsibility to maximize the value of a debtor's estate, it must retain jurisdiction over the various claims against property of that estate. One Bankruptcy Court commented on this as follows:

It is clear that the Bankruptcy Court is the exclusive forum for a determination of the rights of adverse interests in property of the debtor. In re Bellucci, 9 B.R. 887, 888 (1981).

Therefore, it is consistent with the Reform Bankruptcy Act of 1978 and the September 28, 1979 Order of the Bankruptcy Court that jurisdiction over any dispute regarding proceeds of a sale of the Radmalls' real property was retained by the

Bankruptcy Court when Bailey filed his Complaint in the District Court.

Even if it could be assumed that Bankruptcy Court did not have exclusive jurisdiction over the proceeds of the trustee's sale, surely the Bankruptcy Court had concurrent jurisdiction with the District Court. American Jurisprudence states the general law of concurrent jurisdiction as follows:

As a general rule the exercise of concurrent jurisdiction is controlled by the principle of priority. According to this principle the court of concurrent jurisdiction that first exercises it thereby acquires exclusive jurisdiction to further proceed in the case. In other words, once a court of concurrent jurisdiction has begun to exercise its jurisdiction over a case its authority to deal with the action is, subject to appellate review, exclusive until it is completely disposed of, and no other court of concurrent jurisdiction may interfere with the proceedings thus pending. (20 Am. Jur. 2d, Courts §128, p. 481.)

Because of the Radmalls' bankruptcy, the Bankruptcy Court's Order of September 28, 1979, and the filing of the Verified Complaint by Bailey in Bankruptcy Court, the Bankruptcy Court first assumed jurisdiction over the Radmalls' real property or any proceeds which that property may generate.

This Court in Upton v. Heiselt Construction Company, 280 P. 2d 971 (Utah, 1955), adopted the following view on concurrent jurisdiction:

. . . two identical actions between the same parties cannot co-exist in different courts generally is true, there is an established exception thereto, where such actions are initiated first in one state then in another, or in a state court then in a federal court or vice versa, in which cases it is held generally that although the first action filed should be pursued to finality, such identical actions can co-exist in

different states, or in a state and federal court, provided, however, that a judgment in one may be pleaded in bar or in abatement to the other . . . (280 P. 2d 971, 973-974.)

In this matter, the first action was filed in a federal court by Bailey. It was pursued to finality, a dismissal with prejudice. Bailey did not appeal that dismissal which was his right. Instead, one week later, Bailey filed a similar Complaint in District Court. The District Court then refused to recognize the final determination of the Bankruptcy Court and bar Bailey's Complaint.

CONCLUSION

Deseret Federal's borrowers, the Radmalls, had defaulted on their loan. To remedy this situation, Deseret Federal began the process for a non-judicial foreclosure of the Radmalls' real property. However, before the situation had been remedied, the Radmalls filed bankruptcy. Deseret Federal then pursued its remedies in Bankruptcy Court. As a result of a specific order of the Bankruptcy Court, Deseret Federal conducted a trustee's sale. At that sale, Deseret Federal made the only bid and bid what was due and owing on its note. No money resulted from the sale.

Subsequent to the trustee's sale, Deseret Federal learned that Bailey, a junior lien claimant on the Radmalls' real property, had filed a Verified Complaint in Bankruptcy Court alleging that Deseret Federal had violated U.C.A. §§57-1-19, et. seq. (1953 as amended). Deseret Federal

immediately sought and received a dismissal with prejudice of said Complaint. Approximately one week later, Bailey filed a Complaint in a State District Court, again alleging that U.C.A. §57-1-19, et. seq., had been violated by Deseret Federal. Deseret Federal sought a dismissal of that Complaint because the Bankruptcy Court had exclusive jurisdiction over the subject matter and because the Bankruptcy Court's dismissal of the Verified Complaint was res judicata upon Bailey.

As was demonstrated above, the District Court erred when it failed to grant Deseret Federal's motions. Therefore, Deseret Federal respectfully requests this Court to reverse the judgment against it.

Respectfully submitted this 24th day of June, 1983.

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MAILING CERTIFICATE

I hereby certify that two (2) true and correct copies of the foregoing BRIEF OF APPELLANT were mailed, postage prepaid, this 24th day of June, 1983, to:

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