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Court of Appeal,
Fourth District, Division 3, California.
PREMIER CAPITAL LIMITED LIABILITY COMPANY, Plaintiff and Respondent,
v.
Gary a. VERGILIO, Defendant and Appellant.

G044935
Filed August 17, 2012

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed. (Super.Ct. No. 30–2009–00294024)
Gary S. Mobley for Defendant and Appellant.

Verus Law Group, Holly Walker and Michael Sobkowiak, for Plaintiff and Respondent.

OPINION
BEDSWORTH, ACTING P. J.

INTRODUCTION

***1** Gary Vergilio has appealed from a final judgment for fraudulent transfer in favor of Premier Capital Limited Liability Company (Premier) for $21,000. Premier, a creditor of Vergilio's company, which had been a chapter 11 debtor-in-possession, asserted that he personally obtained $400,000 that should have gone to the creditors pursuant to a plan of reorganization. Premier prevailed at trial only on its cause of action for fraudulent transfer. Vergilio asserts on appeal that the trial court should have granted his pretrial motion for judgment on the pleadings because the federal district court sitting in bankruptcy had exclusive jurisdiction over the fraudulent transfer cause of action.

We requested supplemental briefing on the issue of whether Premier had stated a cause of action for fraudulent transfer against Vergilio. We learned from this briefing that Premier was actually suing Vergilio as a first transferee of a fraudulent transfer.

We conclude that the trial court had jurisdiction over Premier's fraudulent transfer claim. As this was the only issue Vergilio raised on appeal, we affirm the order denying his motion to dismiss the action on jurisdictional grounds.

FACTS

As alleged in Premier's complaint, Vergilio was the president and CEO of Core Holdings, Inc., which had a number of subsidiaries. Core obtained a $100,000 line of credit from Bank of America in 1998, which it then proceeded to draw down. In 1999, Core and its subsidiaries filed for bankruptcy protection under chapter 11, and Bank of America filed a proof of claim as an unsecured creditor. Core continued to operate as debtor-in-possession, with Vergilio as president and CEO. The court confirmed Core's plan of reorganization in February 2001; the final decree was entered, and the case was closed in March 2005.[FN1]

FN1. Vergilio asked the trial court to take judicial notice of certain bankruptcy court documents, which request the court granted.

The Core reorganization plan provided that the class 5 unsecured creditors, such as Bank of America, were to be paid at least a total of $681,816. The payments were to be made by means of a biannual distribution pro rata of all cash on hand over $200,000 between April 1, 2001, and October 1, 2005, "or until at least $681,816 ... has been distributed to Class 5 creditors, whichever last occurs." If Core did not perform, the plan allowed a creditor to move to convert the case to a chapter 7 liquidation.

Bank of America assigned its right to the Core debt to Premier in September 2001, and Premier filed the notice of assignment in the bankruptcy court in February 2005. As of that time, the debt was nearly $100,000. According to Premier, Core never distributed any cash to the class 5 unsecured creditors.

In August 2005, Maxim Healthcare Services, Inc., bought Core's assets. Maxim paid for the assets by (1) a wire transfer into a Core bank account on August 17, 2005; (2) a wire transfer on August 17 to a third party to pay off a secured note; and (3) a check for $400,000 to Vergilio dated October 12, 2005.

***2** Premier sued Vergilio for conversion, fraud, fraudulent transfer, negligence, and constructive trust.

It claimed as damages its pro rata share of the $400,000 sent by Maxim to Vergilio. Premier did not sue Core for failing to distribute the two wire transfers received in August 2005.

Vergilio moved for judgment on the pleadings just before trial. The basis for the motion was that the bankruptcy court had exclusive jurisdiction over the state court action, because it concerned the enforcement of a reorganization plan. The court denied the motion.

The case was tried to the court over two days. The court ruled in Vergilio's favor on all causes of action except fraudulent transfer. The court entered judgment against Vergilio on this cause of action for $14,800, which, together with $6,293 in interest, made for a total judgment of $21,093.

Vergilio has appealed from the judgment. The only issue he raised on appeal is the denial of his motion for judgment on the pleadings on the fraudulent transfer cause of action, which motion he based on lack of state court jurisdiction.[FN2] Premier has not appealed from the rulings against it. We requested supplemental briefing on the issue of whether Premier had stated a cause of action for fraudulent transfer against Vergilio.

FN2. We therefore express no opinion about the other causes of action in Premier's complaint. In addition, we are reviewing an order denying a motion for judgment on the pleadings. The evidence and stipulations introduced in the subsequent trial are therefore irrelevant to our determination. As we would with a demurrer, we concern ourselves only with the allegations of the complaint and with what can be judicially noticed.

DISCUSSION

Federal courts, being courts of limited jurisdiction, can hear only those cases assigned to them by statute. (*Morris v. City of Hobart* (10th Cir.1994) 39 F.3d 1105, 1111.) Outside of bankruptcy, their original jurisdiction in civil cases is usually based on a federal question or on diversity of citizenship. (28 U.S.C. §§ 1331 [federal question –Constitution, laws, treaties of United States], 1332 [diversity].) In bankruptcy cases, however, federal district courts have been granted jurisdiction that reaches well beyond federal question and diversity. Because the Constitution gives Congress power to establish uniform bankruptcy laws (see U.S. Const., art. I, § 8, cl. 4), Congress also has the power to set boundaries of bankruptcy jurisdiction, within constitutional limits.

When Congress adopted a new Bankruptcy Act in 1978, it greatly expanded the jurisdiction of the bankruptcy courts. In essence, it gave them much the same powers in bankruptcy proceedings as it gave the district courts. But the United States Supreme Court threw a spanner into the works when it decided, in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982) 458 U.S. 50 (*Northern Pipeline*), that the new act granted bankruptcy judges, who are not article III judges, unconstitutionally broad powers to hear and decide cases. (*Id.* at pp. 54, 87.) [FN3] The Supreme Court stayed its judgment in order to allow Congress time to fix the problem. (*Id.* at p. 88.)

FN3. Unlike article III judges, who are appointed for life or good behavior, who must be impeached in order to be deprived of office, and whose salaries cannot be reduced, bankruptcy judges were appointed for 14 years, could be removed for reasons other than bad behavior and without impeachment, and could have their salaries reduced. (See *Northern Pipeline, supra,* 458 U.S. pp. 60–61.)

***3** Congress was slow to act, but finally amended the Bankruptcy Act in 1984, restoring bankruptcy court jurisdiction on a more limited basis. Section 1334 of title 28 of the United States Code, the amended jurisdictional provision, vests jurisdiction in title 11 bankruptcy cases as follows: "(a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.[¶] (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." Courts have interpreted the exclusive jurisdiction of subsection (a) to refer to the bankruptcy petition itself. (See *In re Marcus Hook Dev. Park, Inc.* (3d Cir.1991) 943 F.2d 261, 264; *In re Wood* (5th Cir.1987) 825 F.2d 90, 92; *In re Blevins Elec.* (E.D.Tenn.1995) 185 B.R. 250, 253–254.) In other words, a debtor can file a chapter 11 bankruptcy petition only in a federal district court. Under subdivision (b), however, the district court does not have exclusive jurisdiction over civil proceedings arising under title 11 or arising in or related to cases under title 11.[FN4]

> FN4. What prevents creditors and others involved in a bankruptcy from running off to other courts to resolve their individual disputes? 28 United States Code section 1334, subdivision (e)(1), gives the district court in which a chapter 11 case is commenced exclusive jurisdiction over all property of the debtor and of the bankruptcy estate while the action is pending. "Property" in the bankruptcy context is broadly defined. (See *In re Advanced Packaging and Products Co.* (C.D.Cal.2010) 426 B.R. 806, 818; 11 U.S.C. § 541.) In addition, the automatic stay of 11 United States Code section 362, effective while the bankruptcy is open, keeps anyone from starting or pursuing a judicial action or proceeding against the debtor anywhere else.

Definitions are important here, and the wording is critical. A proceeding "arises under" title 11 when it involves a claim made pursuant to an express provision of the Bankruptcy Code. (*In re Premium Escrow Servs.* (D.D.C.2006) 342 B.R. 390, 396; *In re Hanks* (D.Ga.1995) 182 B.R. 930, 935.) Proceedings "arising in" a case under title 11 are administrative matters existing only in a bankruptcy and having no existence outside the bankruptcy proceeding. (*In re Repository Techs., Inc.* (7th Cir.2010) 601 F.3d 710, 719; *In re Premium Escrow Servs., supra*, 342 B.R. at p. 396.) Proceedings are "related to" a case under title 11 when the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. "An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." (*In re Pacor, Inc.* (3d Cir.1984) 743 F.2d 984, 994 overruled on other grounds *Connecticut National Bank v. Germain* (1992) 503 U.S. 249.)

The "arising under," "arising in," and "related to" formulas permit the district court sitting in bankruptcy to get before it a great many proceedings that would not usually come within its orbit. "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate." (*In re Pacor, Inc., supra*, 743 F.2d at p. 994.)[FN5] The formulas enlarge the range of the district court's jurisdiction. (See *Zerand–Bernal Group, Inc. v. Cox* (7th Cir.1994) 23 F.3d 159, 161–162.) They do not, however, decrease the range of other courts' jurisdiction, because the district court's jurisdiction is not exclusive. (See *Hopkins v. Plant Insulation Co.* (N.D.Cal.2006) 349 B.R. 805, 810–812.)

> FN5. Under the bankruptcy acts that preceded the 1978 act, bankruptcy "referees" had jurisdiction only over the property in the court's possession, absent consent. (See *Celotex Corp. v. Edwards* (1995) 514 U.S. 300, 308.)

***4** The 1984 amendments also drew a new distinction, between "core" and "non-core" proceedings. (28 U.S.C. § 157, subd. (b).) The bankruptcy courts were allowed to enter dispositive orders and judgments in the former, subject to district court review, but in non-core proceedings the bankruptcy courts make findings of fact and conclusions of law for submission to the district courts. (28 U.S.C. § 157, subds. (b), (c)(1).) [FN6]

> FN6. Needless to say, this formula has created some problems. (See, e.g., *Stern v. Marshall* (2011) 131 S.Ct. 2594, 2608 [bankruptcy court has statutory but not constitutional authority to determine state-law "core" claim]; *In re Tex. Gen. Petroleum Corp.* (5th Cir.1995) 52 F.3d 1330, 1336–1337 [although designated as "core" proceeding, determination of **fraudulent conveyance** claim not within bankruptcy court's constitutional jurisdiction; requires de novo review by district court].)

Obviously the exclusive jurisdictional provisions of 28 United States Code section 1334, subdivisions (a) and (e) do not apply here. The petition filing stage is long past, and the bankruptcy is no longer "pending," so the bankruptcy court no longer has jurisdiction over the debtor's property. The fraudulent transfer lawsuit did not "arise under" the provisions of the Bankruptcy Code, and it was not an administrative matter "arising in" a chapter 11 bankruptcy, having no existence outside of bankruptcy. It might fit the definition of a "related to" proceeding – its outcome would affect the bankruptcy estate – except that the case is no longer being actively administered. But even if Premier's fraudulent transfer cause of action is a proceeding "related to" a case under chapter 11, the district court does not have exclusive jurisdiction over it. It could properly be determined in state court.

Vergilio argues that a "proceeding to determine, avoid, or recover **fraudulent conveyances**" is a "core proceeding" and therefore the exclusive province of the bankruptcy court. (See 28 U.S.C. § 157, subd. (b)(2)(H).) Vergilio misunderstands the purpose of the distinction between core proceedings and non-core proceedings. 28 United States Code section 157 allocates powers and duties between the bankruptcy courts and their corresponding district courts in chapter 11 proceedings. The section permits the district court, to which section 1334 grants chapter 11 jurisdiction, to "refer" title 11 cases to bankruptcy judges. (28 U.S.C. § 157, subd. (a).) These judges may then "hear and determine all cases under title 11 and all core proceedings arising under title 11 or arising in a case under title 11," in other words, the matters referred to in 28 United States Code section 1334, subdivision (a), and two of the three kinds of "proceedings" referred to in subdivision (b), if they are core proceedings. As to those matters, the bankruptcy court can enter orders and judgments.[FN7] In the absence of consent by the parties involved, however, the bankruptcy judge cannot determine a "related to" or non-core proceeding. (See *Stern v. Marshall, supra,* 131 S.Ct. at p. 2605 ["non-core" and "related to" synonymous terms].) As to that type of proceeding, the bankruptcy judge submits proposed findings of fact and conclusions of law to the district court, which enters the final order or judgment after de novo review. (28 U.S.C. § 157, subd. (c).)

FN7. These orders and judgments are subject to review by the district court. (28 U.S.C. § 158, subd. (a).)

***5** The distinction between core and non-core proceedings does not alter the basic jurisdictional scheme. It specifies which court, bankruptcy or district, makes the final determination of the proceeding before it. The bankruptcy court can determine core "arising under" and "arising in" proceedings. The district court determines "related to," non-core proceedings. "[28 United States Code s]ection 157 allocates the authority to enter final judgment between the bankruptcy court and the district court. [Citation.] The allocation does not implicate questions of subject matter jurisdiction." (*Stern v. Marshall, supra,* 131 S.Ct at p. 2607.) [FN8]

FN8. Vergilio ignores case law casting doubt on whether fraudulent transfer actions are core proceedings at all. (See *Granfinanciera v. Nordberg* (1989) 492 U.S. 33, 60–62.)

Vergilio also argues that instituting suit against him without bankruptcy court permission violates the *Barton* doctrine, and the cause of action for fraudulent transfer must be dismissed on that account. Based on the United States Supreme Court's ruling in *Barton v. Barbour* (1881) 104 U.S. 126, the *Barton* doctrine prohibits suits against court-appointed trustees without leave of the appointing court. "[A] party must first obtain leave of the bankruptcy court before it initiates an action in another forum against a bankruptcy trustee or other officer appointed by the bankruptcy court for acts done in the officer's official capacity." (*In re Crown Vantage, Inc.* (9th Cir.2005) 421 F.3d 963, 970 (*Crown Vantage*).) [FN9] We are here concerned only with whether a suit to recover a fraudulent transfer from Vergilio violates the *Barton* doctrine.

FN9. Although the *Barton* case involved a state-court receiver, subsequent case law has expanded the doctrine's reach to bankruptcy trustees. (See *Carter v. Rodgers* (11th Cir.2000) 220 F.3d 1249, 1252.)

The issue in *Crown Vantage* was whether certain parties involved in a bankruptcy could sue the liquidating trustee for breaching a settlement agreement that the parties asserted released them from claims the liquidating trustee was pursuing against them. (*Crown Vantage,* supra, 421 F.3d at p. 969.) The court held the parties were trying to sue the trustee for acts done in his official capacity, and therefore the *Barton* doctrine applied. (*Id.* at p. 975.) Similarly, in *Muratore v. Darr* (1st Cir.2004) 375 F.3d 140, a case on which the *Crown Vantage* court relied, the court held that the person who owned and controlled a Chapter 11 debtor could not sue the court-appointed Chapter 11 trustee for misconduct while discharging the trustee's duties, even though the bankruptcy had closed, without leave of the bankruptcy court. (*Id.* at p. 147.)

In arguing that the *Barton* doctrine applies here because he was acting in his official capacity, Vergilio is looking at the wrong end of the transfer. He is looking at the sale of Core to Maxim and the dispersal of the sale proceeds. Even if the sale was undertaken in Vergilio's official capacity as Core's de facto trustee, the sale itself is *not* the basis of Premier's claim. Likewise Premier is not suing Vergilio as Core's CEO for directing Maxim to pay him instead of sending the money to Core or suing him, again as Core's CEO, for indirectly funneling money to himself that should have gone to Core.[FN10] Instead, Premier is suing Vergilio solely for being on the receiving end of the cash — for being a transferee — not for anything he did in order to get the cash into his pocket. The sale of Core to Maxim might have qualified for *Barton* doctrine protection, as might the other steps along the way. Simply getting a check, however, was not an act done in Vergilio's official capacity as Core's CEO.

FN10. A corporate principal does not become a transferee merely by causing the debtor to make a fraudulent transfer. (*Lucas Dallas, Inc. v. Broach* (1995 BAP 9th Cir.) 185 B.R. 801, 809–810 [applying California law].)

***6** As Premier explained in its supplemental briefing, it sued Vergilio as a first transferee of a voidable fraudulent transfer under Civil Code section 3439.08, subdivision (b)(1).[FN11] The voidable fraudulent transfer is a transfer between Core and Vergilio; Premier is suing Vergilio because he obtained money, indirectly, from Core that should have gone to Core's creditors. Getting this money was entirely passive; it did not involve Vergilio acting in his official capacity in the bankruptcy. All he had to do was to pick up Maxim's check (the allegation was that the check was made out to him personally, rather than to Core) and cash it. Receiving this money is the only basis on which Premier's fraudulent transfer claim rests.

FN11. Civil Code section 3439.08, subdivision (b) provides: “Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under paragraph (1) of subdivision (a) of Section 3439.07, the creditor may recover judgment for the value of the asset transferred, as adjusted by subdivision (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the following: [¶] (1) The first transferee of the asset or the person for whose benefit the transfer was made.” An intentionally fraudulent transfer

That means Premier's cause of action for fraudulent transfer does not rest on acts done by Vergilio as a court-appointed officer in his official capacity. Premier is not suing him for violating his duties to Core as debtor-in-possession in any capacity. It is not suing him for selling Core to Maxim. It is suing him, just as it would have sued someone completely unconnected to Core, because he allegedly received money from Maxim that Premier contends should have gone into the pot from which it hoped to get paid as an unsecured creditor. Because this is not an act done in Vergilio's official capacity, the *Barton* doctrine does not apply.

We conclude the state court had jurisdiction over the fraudulent transfer cause of action. We therefore affirm the order of the trial court on the motion for judgment on the pleadings that Vergilio made on the grounds of subject matter jurisdiction.

DISPOSITION

The order denying the motion for judgment on the pleadings as to the fraudulent transfer cause of action is affirmed. Respondent is to recover costs on appeal.

WE CONCUR:
FYBEL, J.
IKOLA, J.

Cal.App. 4 Dist., 2012
Premier Capital Limited Liability Company v. Vergilio
Not Reported in Cal.Rptr.3d, 2012 WL 3539344 (Cal.App. 4 Dist.)

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