

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: )  
)  
MICHAEL A. PACE, )  
Debtor. )  
)  
\_\_\_\_\_)  
C. RICHARD KAMIN, et al., )  
Appellants, )  
)  
v. ) CIVIL ACTION No. 00-2279  
)  
MICHAEL A. PACE, )  
Appellee. )

**MEMORANDUM**

**Padova, J.**

**July , 2000**

Appellants New Jersey Division of Motor Vehicles Director C. Richard Kamin and Attorney General of New Jersey John J. Farmer, Jr. (“Appellants”) appeal the Bankruptcy Court’s Order dated March 24, 2000, which denied Appellants Motion to Dismiss the Complaint of Michael A. Pace (“Appellee” or “Debtor”). For the reasons that follow, the Court will affirm the Order of the Bankruptcy Court.

I. **FACTUAL BACKGROUND**

On June 10, 1999, Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code. In anticipation of an order granting discharge of his debts, he filed the instant adversary proceeding on September 8, 1999. This action seeks a declaratory judgment that certain New Jersey motor vehicle surcharges are dischargeable in this bankruptcy case. Debtor further seeks injunctive relief

preventing Defendants<sup>1</sup> from collecting these surcharges in violation of the United States Bankruptcy Code. Defendants filed their Motion to Dismiss on January 14, 2000. Bankruptcy Judge Diane Weiss Sigmund granted the Motion to Dismiss of Defendants JUA and MTF, but denied the Motion to Dismiss of Appellants. Appellants timely filed the instant appeal on March 24, 2000. The matter is fully briefed and ready for decision.

## II. LEGAL STANDARD

“[I]n bankruptcy cases, the district court sits as an appellate court.” In re Cohn, 54 F.3d 1108, 1113 (3d Cir. 1995). “As a proceeding tried initially before the Bankruptcy Court for the Eastern District of Pennsylvania, the standard of review for the district court is governed by [Federal Bankruptcy Rule of Procedure] 8013.” Id. Rule 8013 provides:

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge’s judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Fed. Bankr. R. P. 8013.

The district court “‘applies a clearly erroneous standard to findings of fact, conducts plenary review of conclusions of law, and must break down mixed question of law and fact, applying the appropriate standard to each component.’” Meridian Bank v. Alten, 958 F.2d 1226, 1229 (3d Cir. 1992) (quoting In re Sharon Steel Corp., 871 F.2d 1217, 1222 (3d Cir. 1989)). De novo review requires the district court to make its own legal conclusions, “without deferential regard to those made by the bankruptcy court.” Fleet Consumer Discount Co. v. Graves (In re Graves), 156 B.R.

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<sup>1</sup>Debtor named the following parties as Defendants in the adversary suit: New Jersey Automobile Full Insurance Underwriting Association (“JUA”); New Jersey Market Transition Facility (“MTF”); and Appellants Kamin and Farmer.

949, 954 (E.D. Pa. 1993), aff'd, 33 F.3d 242 (3d Cir. 1994).

### III. DISCUSSION

Appellants based their Motion to Dismiss on the argument that the Bankruptcy Court lacked subject matter jurisdiction. In denying the Motion, Judge Sigmund found Debtor's allegations of continuing violation of federal law by Appellants sufficient to establish subject matter jurisdiction under the principles of Ex parte Young, 209 U.S. 123 (1908). Appellants contend that the Bankruptcy Court committed errors of law in this finding. The Court disagrees.

In general, the Eleventh Amendment prevents suits in federal court against states, or state officials if the state is the real party in interest. Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 464 (1945). A plaintiff, however, may sue a state official for prospective injunctive and declaratory relief based on federal law. Ex parte Young, 209 U.S. 123, 160 (1908). Under Ex parte Young, in a suit against a state official, when a party seeks only prospective equitable relief--as opposed to any form of money damages or other legal relief--then the Eleventh Amendment generally does not stand as a bar to the exercise of the judicial power of the United States. Id. ("when an official of a state agency is sued in his official capacity for prospective equitable relief, he is generally not regarded as 'the state' for purposes of the Eleventh Amendment and the case may proceed in federal court.").

Thus, the Eleventh Amendment does not bar a claim against state officials, provided that the relief Plaintiff seeks properly is construed as "prospective injunctive relief" or is ancillary to such relief. See Quern v. Jordan, 440 U.S. 332, 347-49 (1979). The type of prospective relief permitted under Young is relief intended to prevent a continuing violation of federal law. See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 146 (1993) (the Young exception

“does not permit judgments against state officers declaring that they violated federal law in the past”); Papasan v. Allain, 478 U.S. 265, 277-78 (1986) (the focus of the Young exception is on addressing ongoing violations of federal law). Thus, the Eleventh Amendment remains a bar to “relief that essentially serves to compensate a person injured in the past by an action of a state official, even though styled as something else.” Blanchiak v. Allegheny Ludlum Corp., 77 F.3d 690, 697 (3d Cir. 1995). Conversely, “relief that serves directly to bring an end to a present, continuing violation of federal law is not barred by the Eleventh Amendment even though accompanied by a substantial ancillary effect on the state treasury.” Id. (quoting Papasan, 478 U.S. at 278).

While acknowledging that, prior to August 1999, the State did not honor bankruptcy discharges of insurance surcharges, Appellants contend that there is no continuing violation of federal law in this case. On August 30, 1999, the Bankruptcy Court declared insurance surcharge debts dischargeable. In re Kish, 238 B.R. 271 (Bankr. D.N.J. 1999) (Kish IV). Appellants submit that their policy has changed since Kish IV, and they have not attempted to collect insurance surcharges of debtors with bankruptcy discharges subsequent to that ruling. Thus, Appellants conclude that because they have neither taken action nor threatened action in violation of federal law against this Debtor, the Ex parte Young exception does not apply to the instant case.

To demonstrate the existence of a federal right under Ex parte Young, a plaintiff must allege that state officials are acting in violation of federal law. Philadelphia Federal of Teachers v. Ridge, No. Civ. A. 96-8051, 1997 WL 364397, at \*4 (E.D. Pa. June 20, 1997) (citing Cory v. White, 457 U.S. 85, 91 (1982)). The Complaint alleges that Appellants have a past history and policy of violating the rights of debtors by seeking to collect discharged debts. (Complaint ¶6.) Debtor seeks prospective relief, to prevent an application of this policy against Debtor. (Id. at ¶1.) Although

Appellants assert that their policy has changed and therefore Debtor is not threatened with action in violation of federal law, the State officials decline to agree that Debtor's debt is uncollectible after discharge. (Reply at 4.) Thus, the Court finds Appellants' statements on this issue contradictory. Furthermore, these statements fall far short of a binding repudiation of the policy of collecting these debts.

The threat that state officials will violate federal law in the future is sufficient to invoke the Ex parte Young exception to sovereign immunity. Green v. Mansour, 474 U.S. 64, 72 (1985). The Court concludes that Plaintiff has sufficiently pled that state officials will violate federal law in the future. The Court, therefore, finds that the Bankruptcy Court has subject matter jurisdiction in this case.

For the foregoing reasons, the Court will affirm the Order of the Bankruptcy Court. An appropriate Order follows.

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	)	
MICHAEL A. PACE,	)	
Appellee.	)	

**ORDER**

AND NOW, this 27th day of July, 2000, upon consideration of the Bankruptcy Court's Order/Memorandum dated March 24, 2000, Appellant's Brief (Doc. No. 3), Appellee's Response thereto (Doc. No. 6), and Appellant's Reply (Doc. No. 8), **IT IS HEREBY ORDERED** that the Order of the Bankruptcy Court dated March 24, 2000 is **AFFIRMED**.

BY THE COURT:

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John R. Padova, J.