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

IN RE: ABDUR AMIN RASHID	**:**	**CIVIL ACTION**
	:	
	:	**NO. 04-1585**
	:	
	:	

MEMORANDUM

Diamond, J. **December 13, 2004**

This is the fourth challenge by Plaintiff, Amin A. Rashid, to the forfeiture of his residence following his federal criminal conviction. The Bankruptcy Court dismissed Rashid's most recent adversary proceeding for lack of subject matter jurisdiction, and denied his motion to reopen the bankruptcy case. I affirm.

Background

In 1993, a jury found Rashid guilty of over fifty criminal counts, including mail fraud, wire fraud, and money laundering. (R. 3, Ex. B). The jury then returned a special verdict on forfeiture, finding that Rashid's Philadelphia home, located at Mount Pleasant Avenue, was traceable to his criminal activity. This Court sentenced him to 168 months imprisonment, assessed him $2,700 in fees, fined him $15,000, and ordered him to pay $1,696,470 in criminal restitution. The Third Circuit affirmed his conviction and sentence. United States v. Rashid, 66 F.3d 3314 (3d Cir. 1995) (unpublished), cert. denied, 516 U.S. 1121 (1996). On May 19, 1994, this Court enforced the jury's special verdict, entering a preliminary Order forfeiting to the United States Rashid's right, title, claim, and interest in the Mount Pleasant Avenue house. (R. 3, Ex. A). Rashid failed to appeal from that Order, thus divesting himself of standing to challenge the forfeiture. United States v. Rashid,

No. 97-1421 (3d Cir. Oct. 28, 1998) (mem. op.).

On July 6, 1994, Rashid, acting *pro se*, filed a voluntary Chapter 7 bankruptcy petition. On April 10, 1998, Rashid received a discharge of his debts, and on May 13, 1998, the Bankruptcy Court closed Rashid's case in accordance with 11 U.S.C. § 350(a).

Despite his lack of standing, for the last ten years "Rashid has unsuccessfully challenged the forfeiture in a number of different fora." United States v. Rashid, No. 97-1421 (3d Cir. Oct. 28, 1998) (mem. op.). Acting *pro se*, he has filed three separate Bankruptcy Court actions seeking damages and an invalidation of the forfeiture Order. See Rashid v. Powel, Adv. No. 94-0739, *aff'd by* Rashid v. Powel, 1998 WL 288426 (E.D. Pa. 1998), *aff'd in part, rev'd in part by* Rashid v. Powel, 210 F.3d 201 (3d Cir. 2000); Rashid v. United States, Adv. No. 97-0890; Rashid v. United States, Adv. No. 00-0633, *aff'd by* Rashid v. United States, 2002 WL 15939 (E.D. Pa 2002); see also United States v. Rashid, No. 97-1421 (3d Cir. Oct. 28, 1998) (mem. op.) (affirming the forfeiture).

On December 2, 2003, Rashid filed his fourth *pro se* action in Bankruptcy Court, again challenging the validity of the forfeiture. Rashid v. United States, Adv. No. 03-1269. On January 19, 2004, the government moved to dismiss, arguing that the Bankruptcy Court lacked subject matter jurisdiction because Rashid filed the adversary complaint after his bankruptcy case was closed. (R. 5). Rashid argued that the Court had jurisdiction, and also moved, *nunc pro tunc,* for his case to be reopened. (R. 7, 8). On February 17, 2004, the Bankruptcy Court dismissed the adversary proceeding for lack of subject matter jurisdiction, and denied Rashid's motion to reopen. (Bankruptcy Court Order dated February 17, 2004, attached as Exhibit B to Def.'s Brief).

Rashid now appeals to this Court, arguing that the Bankruptcy Court erred in dismissing his

fourth adversary complaint.

Legal Standards

This Court has jurisdiction over appeals from final judgments, orders, and decrees from the Bankruptcy Court. 28 U.S.C. § 158(a); FED. R. BANKR. P. 8001. I must review the Bankruptcy Court's factual findings under a clearly erroneous standard, and conclusions of law *de novo*. See FED. R. BANKR. P. 8013; see also In re Pransky, 318 F.3d 536, 542 (3d Cir. 2003); Donaldson v. Bernstein, 104 F.3d 547, 551 (3d Cir. 1997); In re Brown, 311 B.R. 409 (E.D. Pa. 2004). A Bankruptcy Court's decision not to reopen a case pursuant to 11 U.S.C. § 350(b) is reviewed for an abuse of discretion. Donaldson, 104 F.3d at 551.

Courts must construe *pro se* pleadings liberally to ensure that *pro se* litigants are afforded proper deference. Castro v. Chesney, No. 97-4983, 1998 U.S. Dist. LEXIS 17278, *26 (E.D. Pa. Nov. 3, 1998) (citing Haines v. Kerner, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972)); Lancaster County Office of Aging v. Schoener, No. 02-7248, 2003 U.S. Dist. LEXIS 1342, *3, n. 2 (E.D. Pa. Jan. 13, 2003) (citations omitted); see also United States ex rel. Turner v. Rundle, 438 F.2d 839, 845 (3d Cir. 1971) (*pro se* petitions may be inartfully drawn and should be read "with a measure of tolerance") (citations omitted). "[P]ro se plaintiffs . . . are entitled to even greater deference when the sufficiency of their pleadings are [sic] called into question." Boone v. Chesney, No. 94-3293, 1994 U.S. Dist. LEXIS 12339, at *1 (E.D. Pa. Sept. 2, 1994) (citing Haines; Hughes v. Rowe, 449 U.S. 5, 101 S. Ct. 173, 66 L. Ed. 2d 163 (1980)). A judge may not, however, act as a "surrogate attorney" for *pro se* parties. See e.g., Taylor v. Diznoff, 633 F. Supp. 640, 641 (W.D. Pa. 1986) (quoting Mazur v. Pa. Dept. of Transp., 507 F. Supp. 3, 5 (E.D. Pa. 1980), aff'd 649 F.2d 860 (3d Cir. 1981)).

Rashid raises two issues in his appeal: (1) whether the Bankruptcy Court properly dismissed for lack of subject matter jurisdiction; and (2) whether the Bankruptcy Court abused its discretion in denying Rashid's motion to reopen his Chapter 7 Bankruptcy case.

Discussion

I. The Bankruptcy Court Lacked Subject Matter Jurisdiction Over the Adversary Proceeding

Statutory law restricts Bankruptcy Court jurisdiction to those adversary proceedings that could affect the administration of the bankruptcy estate. 28 U.S.C. § 1334; see also Halper v. Halper, 164 F.3d 830, 837 (3d Cir. 1999). The Bankruptcy Court does not have jurisdiction over complaints filed after the underlying bankruptcy case is closed. See Donaldson, 104 F.3d at 552; see also Cook v. Chrysler Credit Corp., 174 B.R. 321, 327 (M.D. Ala. 1994); In re Brantley, 1997 WL 74663 (Bankr. W.D. Ark. 1997) (citing (In re Stardust Inn, Inc., 70 B.R. 888, 890 (E.D. Pa. 1987)). "[W]here a bankruptcy case is closed and the estate no longer exists, and where plaintiff does not seek to have the bankruptcy case opened for cause pursuant to 11 U.S.C. § 350(b) and Bankruptcy Rule 5010, the court is without jurisdiction to entertain any proceedings, irrespective of whether those proceedings are defined as 'core' or related 'non-core' proceedings." Walnut Associates v. Saidel, 164 B.R. 487, 491 (E.D. Pa. 1994).

A Chapter 7 liquidation is closed once the bankruptcy case is fully administered and the trustee has been discharged of his duties. 11 U.S.C. § 350(a). Once the case is closed, there is no matter pending before the Bankruptcy Court.

Rashid received a discharge of debts on April 10, 1998, and, as required by Bankruptcy Code Section 350(a), the Bankruptcy Court Clerk closed Rashid's case on May 13, 1998. In December

2000, the Bankruptcy Clerk reopened the case for statistical purposes after it received documents from this Court regarding certain appeals taken by Rashid before the closing of the bankruptcy case. (R. 2). Although the bankruptcy docket indicated that the case was "reopened," the docket "did not reflect any determination under section 350(b)." (February 17, 2004 Order at 2, n.1). For jurisdictional purposes, the case was still closed. Thus, when Rashid filed his fourth adversary action in 2003, his case had been closed for more than five years. The Bankruptcy Court had no jurisdiction to hear the action unless Rashid first reopened his bankruptcy case. Accordingly, I affirm the Bankruptcy Court's ruling that it lacked subject matter jurisdiction over the adversary proceeding.

II. The Bankruptcy Court Did Not Err in Refusing to Reopen Rashid's Bankruptcy Case

Pursuant to Section 350(b), a Bankruptcy Court may reopen a closed case "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b); see also FED. R. BANKR. P. 5010; In re Otto, 311 B.R. 43, 47 (Bankr. E.D. Pa. 2004). Whether to reopen the case is within the discretion of the Bankruptcy Court. See, e.g., Donaldson v. Bernstein, 104 F.3d 547, 551 (3d Cir. 1997); Judd v. Wolfe, 78 F.3d 110, 116 (3d Cir. 1996); Matter of Case, 937 F.2d 1014, 1018 (5th Cir. 1991) ("This discretion depends upon the circumstances of the individual case and accords with the equitable nature of all bankruptcy proceedings."). A decision denying a motion to reopen "is binding on review absent a clear showing that there was an abuse of discretion." In re Emmerling, 223 B.R. 860, 864 (B.A.P. 2d Cir. 1997).

Rashid bears the burden of demonstrating circumstances sufficient to justify the reopening of his bankruptcy case. See, e.g., In re Cloninger, 209 B.R. 125, 126 (Bankr. E.D. Ark. 1997); In re

Nelson, 100 B.R. 905 (Bankr. N.D. Ohio 1989). Courts consider a variety of factors when deciding whether to reopen a case:

> the length of time that the case was closed...; whether a non-bankruptcy forum, such as state court, has the ability to determine the issue sought to be posed by the debtor...; whether prior litigation in bankruptcy court implicitly determined that the state court would be the appropriate forum to determine the rights, post bankruptcy, of the parties; whether any parties would be prejudiced were the case reopened or not reopened; the extent of the benefit which the debtor seeks to achieve by reopening; and whether it is clear at the outset that the debtor would not be entitled to any relief after the case were reopened.

Otto, 311 B.R. at 47 (internal citations omitted). Generally, a bankruptcy case should remain closed if no valid purpose would be served if the matter were reopened. See In re Carberry, 186 B.R. 401, 402 (Bankr. E.D. Va. 1995) (noting that a bankruptcy case should remain closed "where it appears that [reopening the case] would be futile and a waste of judicial resources"). Further, when the purpose of reopening is to litigate issues that clearly have no merit, the matter should remain closed. See Arleaux v. Arleaux, 210 B.R. 148, 149 (B.A.P. 8th Cir. 1997).

In 2002, this Court dismissed Rashid's third challenge to the 1994 forfeiture based on issue and claim preclusion. See Rashid v. United States, 2002 WL 15939 (E.D. Pa. 2002). That analysis applies to Rashid's current arguments.

Issue preclusion "bars relitigation of an issue identical to that in a prior action." Parkview Assocs. Partnership v. City of Lebanon, 225 F.3d 321, 329 n.2 (3d Cir. 2000). Issue preclusion applies where "(1) the issue decided in the prior litigation [was] identical to the one presented in the later action, (2) there [was] a final judgment on the merits, and (3) the party against whom the doctrine is asserted [was] a party or in privity with a party to the prior adjudication and [had] a full and fair opportunity to litigate the issue in question in the prior action." Seborowski v. Pittsburgh

Press Co., 188 F.3d 163, 169 (3d Cir. 1999). Claim preclusion prohibits re-examination of matters that a party might have, but did not, assert in the prior action. Parkview Assocs., 225 F.3d at 329 n.2. Claim preclusion "bars a subsequent suit on the same cause of action" where there is "a final judgment on the merits of an action involving the same parties (or their privities)." Id.

Rashid has already litigated the validity of his home's forfeiture three times. In 1994, he sought damages and asked to set aside the forfeiture judgment, arguing that the forfeiture Order was a fraudulent transfer under 11 U.S.C. § 548. The Third Circuit concluded that the transfer was not fraudulent, and that the government's post petition activities did not warrant the award of damages. Rashid v. Powel, 210 F.3d 201, 208-09 (3d Cir. 2000).

In 1997, Rashid contended that the criminal forfeiture proceeding violated both the bankruptcy stay and the Constitution. (R. 5, Ex. B at 7-9). The Bankruptcy Court disagreed, concluding that Rashid, "would not be able to establish [a] violation [of the bankruptcy stay] and, hence, could prove no set of facts upon which relief could be premised." (R. 5, Ex. B at 9) (quoting Order Dated March 26, 1998, Adv. No. 97-0890, at 5-8). Rashid did not appeal that decision.

In 2000, Rashid again argued that the forfeiture was invalid because it violated the bankruptcy stay. (R. 5, Ex. B, at 3-4). This Court affirmed the Bankruptcy Court's conclusion that the doctrine of claim and issue preclusion barred this challenge. Rashid, 2002 WL 15939 at *4-5.

In his December 2, 2003 complaint, Rashid once again attacks the forfeiture, this time seeking a declaration that: 1) the forfeiture was a "fraud on the court" because the Court's criminal judgment form did not include a property forfeiture provision (R. 3 at ¶ 15); 2) the forfeiture violated the automatic bankruptcy stay; and 3) the government's obtaining of a pre-bankruptcy foreiture Order was a "fraudulent conveyance." (R. 3 at 4, ¶¶ 1-3).

Even assuming Rashid has standing to challenge the forfeiture, it is clear that Rashid seeks to raise issues that he has litigated, or could have litigated, in his prior actions. First, as Rashid himself acknowledges, the Third Circuit has rejected his claim that the government participated in a fraudulent conveyance. See e.g., Rashid, 210 F.3d at 208 (rejecting Rashid's contention in his first complaint that the forfeiture was a fraudulent conveyance); (R. 3 at ¶ 12). Similarly, in 1997 and 2000, Rashid unsuccessfully argued that the government violated the bankruptcy stay. See March 26, 1998 Order, Adv. No. 97-0890; Rashid, 2002 WL 15939 at *4-5. In these circumstances, the doctrine of issue preclusion bars Rashid from re-litigating this claim. Parkview Assocs., 225 F.3d at 329 n.2.

The doctrine of claim preclusion certainly bars Rashid's claim that the United States committed a "fraud on the court" and "failed to have the District Court include a provision for criminal forfeiture in Rashid's Judgment and Commitment Order." (R. 3 at ¶ 15). It appears that Rashid has also unsuccessfully raised his fraud claim twice before. See Rashid, 210 F.3d at 205; Rashid, 2002 WL 15939 at *2. In any event, this Court and the Third Circuit have affirmed the legality of the forfeiture Order. Rashid, 210 F.3d at 203, 209; Rashid, 2002 WL 15939 at *2. Rashid could have raised any challenge to the criminal judgment form -- which is, in essence, a challenge the forfeiture itself -- in that earlier litigation. His failure to do so bars him from litigating this claim in the present action. Parkview Assocs., 225 F.3d at 329 n.2.

In sum, Rashid's latest lawsuit is merely an attempt to relitigate claims that he has raised -- or could have raised -- in his three prior lawsuits. Plainly, he is precluded from raising them in this fourth lawsuit. Where "it is clear at the outset that [Rashid] would not be entitled to any relief," there is no valid reason to reopen his bankruptcy case. Otto, 311 B.R. at 47. In these circumstances, the Bankruptcy Court's refusal to reopen Rashid's case certainly was not an abuse of discretion. Accordingly, I affirm.

An appropriate Order follows.

BY THE COURT:

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PAUL S. DIAMOND, J.

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ORDER

AND NOW, this 13th day of December, 2004, for the reasons given in the accompanying memorandum opinion, it is **ORDERED**, that the February 17, 2004 decision of the Bankruptcy Court is **AFFIRMED** and the appeal is **DENIED.**

The Clerk of Court shall close this matter for statistical purposes.

PAUL S. DIAMOND, J.