

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

IN RE: LEONARD PELULLO
DEBTOR

CIVIL ACTION

98-MC-53

98-MC-55

M E M O R A N D U M

Broderick, J.

November 2, 1998

Presently before the Court are two motions brought pursuant to 28 U.S.C. § 158(a) and Bankruptcy Rule 8003 for leave to appeal an interlocutory order of the bankruptcy court. The moving parties in case No. 98-53 are David A. Eisenberg, the Chapter 7 Trustee in the underlying bankruptcy case, and the Central States, Southeast and Southwest Areas Pension Fund, ("Central States"), a creditor and party-in-interest in the underlying bankruptcy case. The moving party in case No. 98-55 is Lloyd T. Whittaker, as Trustee of Olympia Holding Corp., a/k/a/ P-I-E Nationwide, Inc. The two motions before the Court are identical and raise the issue whether this Court should hear an interlocutory appeal of an order by the bankruptcy judge that directed the Trustee to abandon his interest in certain insurance policy proceeds. For the reasons stated below, the motions for leave to appeal the bankruptcy judge's order will be granted.

The background to these motions is as follows. The debtor in this case is Leonard Pelullo, who was insured as a director of

P-I-E/Olympia under a Directors and Officers Liability and Company Reimbursement Policy ("Policy") issued by National Union Fire Insurance Company of Pittsburgh ("National Union"). In an interpleader action in the United States District Court for the Northern District of Georgia, National Union sought to resolve multiple and conflicting claims which had been or might be asserted against this Policy. In that action, Mr. Pelullo asserted a claim against the Policy for the advancement of defense costs in two criminal actions against him. The District Court in Georgia entered a final judgment in the interpleader action directing that "National Union is obligated to reimburse or advance out of policy proceeds those reasonable and necessary fees, costs and expenses which may be determined to be defense costs resulting solely from the investigation, adjustment, defense and appeal on behalf of Leonard A. Pelullo in [one of the two criminal actions against him]." Mr. Pelullo having filed for personal bankruptcy, the District Court in Georgia ordered that "[t]he defense costs for the defense of Leonard A. Pelullo [in the criminal action] are to be paid as directed by the United States Bankruptcy Court for the Eastern District of Pennsylvania."

Mr. Pelullo then brought a motion in this bankruptcy case, asking the bankruptcy court to direct Trustee Eisenberg to abandon the interest in the proceeds of the National Union

Policy. The bankruptcy court granted Mr. Pelullo's motion, finding that the debtor does not have a right to receive and keep the proceeds of the policy in question, and that the proceeds are thus not property of the debtor's bankruptcy estate. It is this order which the instant motions seek leave to appeal.

Under 28 U.S.C. § 158, district courts are vested with jurisdiction to hear appeals from bankruptcy courts. Section 158(a)(3) allows parties to appeal interlocutory orders and decrees of a bankruptcy court only with leave of the district court. The bankruptcy code does not offer guidance as to the appropriate standard a district court should apply in determining whether leave should be granted to hear an interlocutory appeal. However, many courts, including courts in this district, have borrowed the language of 28 U.S.C. § 1292(b), which defines the scope of appellate jurisdiction over interlocutory appeals from the district courts, to apply to appeals from interlocutory orders of the bankruptcy courts. E.g., In re Lavelle Aircraft Company, 1995 WL 334325, *2 (E.D.Pa.); Sterling Supply Corp. V. Mullinax, 154 B.R. 660, 662 (E.D.Pa. 1993); State Products Corporation v. Curtis Industries, Inc., 1992 WL 373506, *2 (E.D.Pa.); In re Neshaminy Office Building Associates, 81 B.R. 301, 302-303 (E.D.Pa. 1987). Under § 1292(b) as applied to § 158(a)(3), it is appropriate for a district court to hear an appeal from an interlocutory order of the bankruptcy court if (1)

a controlling question of law is involved, (2) there is substantial ground for difference of opinion regarding the question of law, and (3) an immediate appeal would materially advance the termination of the litigation. See 28 U.S.C. § 1292(d)(2).

The issue of law presented for appeal is whether the proceeds of the National Union Policy are property of the debtor's bankruptcy estate. The moving parties cite a Fifth Circuit case, In re Louisiana World Exposition, Inc., in support of their contention that that the proceeds of the National Union Policy is the property of the debtor's bankruptcy estate. 832 F.2d 1391, 1401 (5th Cir. 1987). In that case, the issue before the court was whether the proceeds of directors' and officers' liability policies were property of the bankruptcy estate of the bankrupt corporation which had taken out the policies. The Fifth Circuit held that the liability policies themselves were the property of the corporation's bankruptcy estate, but that the proceeds of the liability policies belonged to the directors and officers, not to the corporation's bankruptcy estate. Id. On its face, In re Louisiana World Exposition would appear to provide substantial grounds for a difference of opinion regarding whether the proceeds of the National Union Policy are property of the debtor's bankruptcy estate.

Moreover, because the proceeds of the National Union Policy

may well be the only asset of the debtor's bankruptcy estate, it is clear that an immediate appeal would advance the ultimate termination of this litigation.

For the reasons stated above, the motions for leave to appeal the bankruptcy court's order granting the debtor's motion to direct the trustee to abandon his interest in the proceeds of the National Union Policy will be granted.

An appropriate Order follows.

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O R D E R

AND NOW, this 2nd day of November, 1998; for the reasons stated in the Court's accompanying Memorandum of this date;

IT IS ORDERED: The Motions for Leave to Appeal, brought in case No. 97-53 by David A. Eisenberg and Central States, Southeast and Southwest Area Pension Fund, and brought in case No. 97-55 by Lloyd T. Whittaker, are **GRANTED**.

RAYMOND J. BRODERICK, J.