NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. WW-07-1391-JuPaD
BRADLEY DAVID HASLAM and TAMMIE KAY HASLAM,	Bk. No. 07-10112
Debtors.	
M3 HOLDINGS LLC,	
Appellant,	
v.	**M E M O R A N D U M**[1]
BRADLEY DAVID HASLAM and TAMMIE KAY HASLAM,	
Appellees.	

Argued and Submitted on March 18, 2008
at Helena, Montana

Filed - March 31, 2008

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Thomas T. Glover, Bankruptcy Judge, Presiding

Before: JURY, PAPPAS and DUNN, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Appellant M3 Holdings LLC ("M3 Holdings"), which had not filed a timely proof of claim or a complaint objecting to the debtors' discharge of its claim, objected to confirmation of the debtors' chapter 13 plan[2] on good faith grounds. The bankruptcy court confirmed the debtors' plan without analysis of M3 Holdings' objection on the basis that it lacked standing and awarded debtors sanctions pursuant to Rule 9011 in the amount of $2000. M3 Holdings moved for reconsideration, which the bankruptcy court denied.

M3 Holdings appeals the bankruptcy court's order confirming debtors' plan, overruling its objection and awarding sanctions, and the order denying its motion for reconsideration.

We conclude M3 Holdings had standing to object to confirmation of debtors' plan on good faith grounds. We REVERSE and REMAND the case for the good faith determination.

I. FACTS

On January 10, 2007, debtors filed their voluntary chapter 13 petition. Debtors listed M3 Holdings as an unsecured creditor in their Schedule F. M3 Holdings' claim against debtors arose out of a state court lawsuit which it filed against debtors prepetition.

M3 Holdings was the assignee-in-interest of all rights of collection and suit for claims of Peterson Hardware, Inc., arising out of the theft of goods from its Oak Harbor, Washington Ace Hardware Store ("Ace Hardware"). The state court

[2] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

complaint alleged causes of action against debtors for conversion, constructive trust, unjust enrichment and violation of the Criminal Profiteering Act pursuant to Wash. Rev. Code § 9A.82, and sought over $600,000 in money damages.[3] Specifically, the complaint alleged debtor Bradley Haslam wrongfully obtained firearms and other general merchandise from Ace Hardware through an illicit enterprise with Gary Barnes, an Ace Hardware employee, without payment.

On April 10, 2007, debtors removed the state court lawsuit to the bankruptcy court. On June 20, 2007, the bankruptcy court remanded the lawsuit to the state court for the purpose of liquidating M3 Holdings' claim against debtors. It also entered an order awarding M3 Holdings $2000 in attorneys' fees for the improper removal, payable by debtors within thirty days.

On July 2, 2007, debtors moved for reconsideration of the remand order because M3 Holdings did not file a timely proof of claim or timely complaint objecting to discharge of its claim. They also requested to pay the $2000 owed to M3 Holdings in attorneys' fees through their plan as an administrative claim instead of within thirty days. The bankruptcy court clarified its previous holding regarding the remand, finding M3 Holdings' failure to file a timely claim precluded it from sharing in any payment under debtors' plan. It also found that if M3 Holdings was unsuccessful in a nondischargeability action

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[3] Other defendants were also named. The state court amended complaint was not included in the record on appeal. We take judicial notice of the complaint which was docketed and imaged by the bankruptcy court in Adversary No. 07-01106 at Dkt. no. 1. Atwood v. Chase Manhattan Mortgage Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

against debtors and debtors completed their plan, its claim would be discharged.[4] The court granted debtors' request regarding the $2000 payment as an administrative claim.

On August 3, 2007, M3 Holdings objected to confirmation of debtors' plan as not being proposed in good faith in violation of § 1325(a)(3).[5] It alleged that debtors misrepresented to the bankruptcy court their assets and liabilities and the amount of their unsecured debts, which exceeded the maximum limit for eligibility under chapter 13. M3 Holdings also argued that debtors were retaining "luxury goods," which constituted their largest asset, without proposing to pay for them. M3 Holdings maintained that it alone held a $600,000 unsecured claim and described the "luxury goods" as firearms in debtors' possession that belonged to it.

On August 6, 2007, debtors' counsel sent a letter to M3 Holdings' attorney requesting withdrawal of M3 Holdings' objection to the debtors' plan, citing the bankruptcy court's observation in its clarification of the remand order that M3 Holdings had not filed a timely proof of claim or nondischargeability complaint. Debtors also filed a response to M3 Holdings' objection asserting it lacked standing to object to confirmation of their plan and requested Rule 9011 sanctions in the same pleading.

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[4] Although M3 Holdings' nondischargeability complaint was untimely filed, the bankruptcy court dismissed it on July 30, 2007, for failure to pay the filing fee.

[5] This section provides that the court shall confirm a plan if the plan has been proposed in good faith and not by any means forbidden by law.

On September 12, 2007, the bankruptcy court signed the order confirming debtors' plan, overruling M3 Holdings' objection and revoking the $2000 sanction awarded to M3 Holdings as attorneys' fees for the improper removal, directing that debtors should instead pay that amount to their attorney rather than M3 Holdings.[6] The order was entered on September 14, 2007.

M3 Holdings moved for reconsideration on the grounds that it was a party in interest with standing to object to confirmation of debtors' plan based on its continued title interest in the firearms and its administrative claim. It further asserted that the bankruptcy court had an independent duty to determine whether the plan was proposed in good faith. Lastly, M3 Holdings contended that the award of sanctions was improper because debtors did not file a separate motion as required by Rule 9011, and it had a reasonable basis in law to assert its standing.

On October 1, 2007, the bankruptcy court entered an order denying M3 Holdings' motion for reconsideration on the ground that its motion was not ripe for reconsideration since neither of the parties had submitted an order on the court's former ruling on the merits.

M3 Holdings timely appealed.

II. JURISDICTION

The bankruptcy court had subject matter jurisdiction pursuant to 28 U.S.C. § 1334 over this core proceeding under

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[6] The order did not direct M3 Holdings to pay debtors' attorney's fees as a sanction.

§ 157(b)(2)(A) and (L). We have jurisdiction under 28 U.S.C. § 158.

III. ISSUES

A. Whether Appellant had standing to object to confirmation of debtors' chapter 13 plan.

B. Whether the bankruptcy court erred in awarding Rule 9011 sanctions against Appellant.

IV. STANDARDS OF REVIEW

We review the bankruptcy court's determination of standing de novo. Brown v. Sobczak (In re Sobczak), 369 B.R. 512, 516 (9th Cir. BAP 2007), citing Arakaki v. Lingle, 477 F.3d 1048, 1056 (9th Cir. 2007).

A bankruptcy court's award of sanctions is reviewed for an abuse of discretion. Miller v. Cardinale (In re DeVille), 361 F.3d 539, 547 (9th Cir. 2004). A bankruptcy court abuses its discretion if it bases its decision on an erroneous view of the law or clearly erroneous factual findings. Smyth v. City of Oakland (In re Brooks-Hamilton), 329 B.R. 270, 277 (9th Cir. BAP 2005). We can reverse only if we have a definite and firm conviction that there was a clear error of judgment in the conclusion reached. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 365 (9th Cir. BAP 2004).

We review the denial of a motion for reconsideration for abuse of discretion. Weiner v. Perry, Settles & Lawson, Inc. (In re Weiner), 161 F.3d 1216, 1217 (9th Cir. 1998).

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V. DISCUSSION

A. Standing

M3 Holdings asserts three possible bases upon which to find that it is a party in interest with standing to object to confirmation of debtors' plan, two of which relate to the claims it asserted against debtors in the state court lawsuit. M3 Holdings contends that its title interest in the firearms in debtors' possession, although disputed, gives it standing to object. Next, it asserts that its status as an unsecured creditor due to its asserted causes of action for money damages gives it standing. M3 Holdings' third basis for standing is as an administrative claimant.

M3 Holdings argues that the term "party in interest" as used in § 1324(a) should be broadly construed to mean any person substantially impacted by the case. Debtors argue for a narrow construction of the term that would deny party in interest standing to unsecured creditors like M3 Holdings who did not file a proof of claim or timely complaint to except its claim from discharge. For this proposition, debtors primarily rely upon In re Stewart, 46 B.R. 73, 77 (Bankr. D. Or. 1985)(finding creditor who did not have allowed claim lacked standing to object to debtor's plan on ground debtor did not commit additional funds that could be used to pay its claim).[7]

[7] Debtors also cite Fondiller v. Robertson (In re Fondiller), 707 F.2d 441, 443 (9th Cir. 1983) and Yates v. Forker (In re Patriot Co.), 303 B.R. 811, 815 (8th Cir. BAP 2004) for the proposition that M3 Holdings does not meet the "aggrieved person" test because it does not have a direct pecuniary interest in the case, presumably because it did not file a proof of claim. (continued...)

Section 1324(a) provides that "[a] party in interest may object to confirmation of the plan." The term party in interest is not defined by the Code. In determining congressional intent, we start by application of the plain meaning rule. If the statutory language is clear, we must apply it by its terms unless to do so would lead to absurd results. United States v. Ron Pair Enters., Inc., 489 U.S. 235, 240-41 (1989). We not only look to the language of the statute, but also to "the specific context in which the language is used, and the broader context of the statute as a whole." Hough v. Fry (In re Hough), 239 B.R. 412, 414 (9th Cir. BAP 1999).

The plain language of § 1324(a) shows that Congress employed a broad term for a party in interest, rather than a more limiting term such as "holder of an allowed claim" or "holder of a filed proof of claim" or even "creditor."[8] Jensen v. Froio (In re Jensen), 369 B.R. 210, 230 (Bankr. E.D. Pa.

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[7](...continued)
Although the standard in Fondiller and Patriot Co. is similar, it is not dispositive here in that it addresses appellate standing rather than standing at the trial level. The "aggrieved person" test is a more restrictive standing test applicable to appellants created to prevent unreasonable delay. Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d 774, 777 (9th Cir. 1999). Generally, a party in interest has a broad right to participate in a bankruptcy case. The standards for evaluating party in interest standing are pertinent to determine who may object to debtors' plan.

[8] Furthermore, if Congress wanted to limit the term party in interest to the holder of an allowed claim, it knew how to do so, as demonstrated by the more limiting language it used in § 1325(b)(1). That section provides that if a trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless certain conditions in the statute are met. (emphasis added).

2007). Indeed, the term has been appropriately described as an "expandable concept" that depends upon the factual context of the case. Sobczak, 369 B.R. at 517-18 (noting that a party in interest may be one who has an actual pecuniary interest in the case, one who has a practical stake in the outcome of the case, or one who will be impacted in any significant way in the case).[9]

M3 Holdings' status as an unsecured creditor is undisputed. As a creditor, M3 Holdings falls within the scope of a party in interest as enumerated in § 1109(b).[10]

A "creditor" is defined as an entity that has a claim[11] against the debtor that arose at the time of or before the order for relief. § 101(10)(A). The definition requires only that the entity have a claim or right to payment. There is no requirement that an entity have an "allowed" claim or a claim

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[9] It is unclear how M3 Holdings' alleged title interest in the firearms in debtors' possession gives it party in interest standing to object to confirmation of debtors' plan. If the state court ultimately concludes that M3 Holdings has title to the firearms, the confirmation of debtors' plan will not impact M3 Holdings because, based on that conclusion, the firearms are not, and never were, property of the debtors or their bankruptcy estate. Nonetheless, as set forth herein, M3 Holdings had standing to object to confirmation of debtors' plan on good faith grounds based upon its status as an unsecured creditor and administrative claimant.

[10] Were this a chapter 11 case, M3 Holdings would clearly be considered a party in interest under § 1109(b). This section governs who has a right to be heard on issues in a chapter 11 reorganization and identifies as a party in interest, among others, a creditor. § 1109(b).

[11] A "claim" is defined as a right to payment, whether or not such right is reduced to judgment, liquidated, contingent, disputed, or unsecured. See § 101(5)(A).

"proof of which has been filed." Johnston v. JEM Dev. Co. (In re Johnston), 149 B.R. 158, 161 (9th Cir. BAP 1992)(noting that a creditor is a party in interest regardless of the status of its claim); Armstrong v. Rushton (In re Armstrong), 303 B.R. 213, 219 (10th Cir. BAP 2004)(noting that a person does not need to have filed a proof of claim to be a party in interest); In re Turpen, 218 B.R. 908, 911 (Bankr. N.D. Iowa 1998)(noting that a creditor is not defined as an entity that has a claim against the debtor, proof of which has been filed)(emphasis added); see also Rule 3003(c)(2)(stating that failure to file proof of claim eliminates creditor's right to distribution). Accordingly, we conclude that an unsecured creditor such as M3 Holdings does not lose its standing as a party in interest simply because it failed to file a timely proof of claim or complaint objecting to discharge of its claim.

A party's standing in a bankruptcy case, however, is not an all-or-nothing proposition. Rather, it must be determined on a particularized basis as to each theory raised. Lewis v. Casey, 518 U.S. 343, 358 n.6 (1996)(noting that standing is not dispensed in gross, but rather is determined by the specific claims presented); In re Ofty Corp., 44 B.R. 479, 481 (Bankr. D. Del. 1984)(noting that "An entity may be [a] real party in interest and have standing in one respect while he may lack standing for another purpose."). Since an unsecured creditor must hold an allowed claim to receive distributions under a confirmed plan, M3 Holdings' failure to file a proof of claim or complaint objecting to the discharge of its claim has an effect on its standing to object to debtors' plan in at least one

respect. That is, because M3 Holdings does not have an allowed claim, it could not object to confirmation of debtors' plan on grounds related to the sufficiency of distributions.[12] Jensen, 369 B.R. at 231.

Nonetheless, its failure to file a proof of claim does not preclude M3 Holdings from being a party in interest with standing to object to confirmation of debtors' plan on good faith grounds. M3 Holdings as an unsecured creditor has an actual pecuniary interest in ensuring that its claims against debtors are not discharged in a bankruptcy that it contends was not filed in good faith. Jensen, 369 B.R. at 231. Accordingly, the bankruptcy court should have considered M3 Holdings' objections regarding the inaccuracy of debtors' schedules, hidden assets, and eligibility, which are all issues related to debtors' lack of good faith. See Guastella v. Hampton (In re Guastella), 341 B.R. 908, 918 (9th Cir. BAP 2006)(addressing eligibility in context of good faith objection); In re Johnson, 262 B.R. 831, 842 (Bankr. D. Idaho 2001)(addressing hidden assets and accuracy of debtor's schedules in context of good faith objection).

Likewise, M3 Holdings' administrative claim gave it the necessary financial stake to be considered a party in interest

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[12] Debtors' reliance on Stewart for a narrow construction of the term party in interest is inapposite. In Stewart, the court found that because the creditor did not have an allowed claim, it lacked standing to object to the debtor's plan based upon the debtor's failure to commit additional funds which could be used to pay its claim. 46 B.R. at 77. Thus, Stewart holds that a creditor without an allowed claim lacks standing to object to the distributions under a plan.

with standing to object to confirmation of debtors' plan on good faith grounds. In re Barnes, 275 B.R. 889, 892-93 (Bankr. E.D. Cal. 2002)(finding chapter 7 trustee, although not a creditor, was an administrative claimant with necessary financial interest to be considered party in interest with standing to object to chapter 13 plan).

In sum, we conclude that the bankruptcy court erred in overruling M3 Holdings' objection to confirmation of debtors' plan on good faith grounds based upon its lack of standing. We therefore remand the case to the bankruptcy court to evaluate the good faith requirement in light of M3 Holdings' objection.

B. Rule 9011 Sanctions

We conclude that the bankruptcy court abused its discretion in awarding sanctions on two separate grounds. First, M3 Holdings had standing to object to confirmation of debtors' plan on good faith grounds. Next, Rule 9011(c)(1)(A) states that a motion for sanctions should be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 9011(b). Debtors' request for sanctions set forth in their response to M3 Holdings' objection to their plan unequivocally failed to meet the separate motion or specificity requirements. M3 Holdings, therefore, never had the opportunity to avail itself of the safe harbor provisions of the rule. Nonetheless, the bankruptcy court awarded sanctions without requiring debtors to comply with the procedure in Rule 9011(c)(1)(A). This clear legal error constitutes an abuse of discretion.

C. Motion for Reconsideration

The bankruptcy court denied M3 Holdings' motion for reconsideration on the ground that the order overruling M3 Holdings' objection to debtors' plan had not yet been submitted. A review of the record shows that the order on the merits of M3 Holdings' objection was entered on September 14, 2007, before the court signed the order denying M3 Holdings' motion for reconsideration. In light of our prior determinations reversing and remanding, we do not need to address M3 Holdings' appeal of the bankruptcy court's denial of its motion for reconsideration as the issue is moot.

VI. CONCLUSION

We REVERSE for the reasons stated herein and REMAND the case to the bankruptcy court for a resolution of M3 Holdings' good faith objection to confirmation.