IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-30494

19-30494

In the Matter of: DONALD H. GRODSKY

Debtor

JOHN T. LAMARTINA-HOWELL; ELISE LAMARTINA,

Appellants

v.

DAVID ADLER; GORDON, ARATA, MONTGOMERY, BARNETT, MCCOLLAM, DUPLANTIS & EAGAN, L.L.C., formerly known as Gordon, Arata, McCollam, Duplantis and Eagan, L.L.C.; FERNAND L. LAUDUMIEY, IV; DAVID J. MESSINA; LAKE VILLAS NUMBER 2 HOMEOWNERS ASSOCIATION, INCORPORATED; SEALE & ROSS, A PROFESSIONAL LAW CORPORATION; GLEN GALBRAITH; LESLIE BOLNER,

Appellees

Consolidated with 19-30496

In the Matter of: DONALD H. GRODSKY

Debtor

JOHN L. HOWELL; ELISE LAMARTINA,

Appellants

v.

LAKE VILLAS NUMBER 2 HOMEOWNERS ASSOCIATION, INCORPORATED; DAVID V. ADLER; GORDON, ARATA, MCCOLLAM, DUPLANTIS AND EAGAN, L.L.C.; CHAFFE MCCALL, L.L.P.; FERNAND L. LAUDUMIEY, IV; DAVID J. MESSINA; SEALE & ROSS, A PROFESSIONAL LAW CORPORATION; GLEN GALBRAITH; LESLIE BOLNER,

Appellees

Appeals from the United States District Court
for the Eastern District of Louisiana

ON PETITIONS FOR REHEARING AND REHEARING EN BANC

(Opinion _____, 5 Cir., _____, _____ F.3d _____)

Before DAVIS, JONES, and ENGELHARDT, Circuit Judges.

PER CURIAM:

(✓) The Petitions for Rehearing are DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Petitions for Rehearing En Banc are also DENIED.

( ) The Petitions for Rehearing are DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petitions for Rehearing En Banc are also DENIED.

( ) A member of the court in active service having requested a poll on the

reconsiderations of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearings En Banc are DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

APPENDIX A

In the Matter of: DONALD H. GRODSKY Debtor

JOHN T. LAMARTINA-HOWELL; ELISE LAMARTINA, Appellants
v.
DAVID ADLER; GORDON, ARATA, MONTGOMERY, BARNETT, MCCOLLAM, DUPLANTIS & EAGAN, L.L.C., formerly known as Gordon, Arata, McCollam, Duplantis and Eagan, L.L.C.; FERNAND L. LAUDUMIEY, IV; DAVID J. MESSINA; LAKE VILLAS NUMBER 2 HOMEOWNERS ASSOCIATION, INCORPORATED; SEALE & ROSS, A PROFESSIONAL LAW CORPORATION; GLEN GALBRAITH; LESLIE BOLNER, Appellees

In the Matter of: DONALD H. GRODSKY Debtor

JOHN L. HOWELL; ELISE LAMARTINA, Appellants
v.
LAKE VILLAS NUMBER 2 HOMEOWNERS ASSOCIATION, INCORPORATED; DAVID V. ADLER; GORDON, ARATA, MCCOLLAM, DUPLANTIS AND EAGAN, L.L.C.; CHAFFE MCCALL, L.L.P.; FERNAND L. LAUDUMIEY, IV; DAVID J. MESSINA; SEALE & ROSS, A PROFESSIONAL LAW CORPORATION; GLEN GALBRAITH; LESLIE BOLNER, Appellees

No. 19-30494
C/w 19-30496

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

April 1, 2020

Appeals from the United States District Court for the Eastern District of Louisiana
USDC No. 2:19-CV-10068
USDC No. 2:19-CV-10334

Before DAVIS, JONES, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Appellants John LaMartina-Howell ("John") and Elise LaMartina ("Elise") appeal the district court's affirmance of two bankruptcy court orders dismissing all claims related to the ownership of a promissory note and enjoining all future claims regarding the same. We affirm.

I.

This consolidated appeal relates to a dispute that has been litigated in state, bankruptcy, and district courts for the last six years. This appeal should, at long last, be the end of the road. In 2014, Defendant-Appellee, Lake Villas II Homeowners Association ("Lake Villas"), obtained a judgment in Louisiana state court for $37,147.68 against Elise for her failure to pay her homeowners

association fees. When Lake Villas attempted to foreclose on her condo to satisfy the judgment, a second, higher-priority mortgage was discovered. The ownership of that note sparked great controversy. Donald Grodsky ("Grodsky"), whose bankruptcy trustee is a Defendant-Appellee here, claimed ownership, as did Elise's son John.

During Lake Villas' suit against Elise, the Louisiana court determined, after hearing extensive and shifting testimony from the LaMartina family and Grodsky, that the note was the property of Grodsky.1 Grodsky's closed 2009 Chapter 7 bankruptcy case was then re-opened "to administer and distribute the proceeds of the Mortgage Note" because he had failed to disclose the mortgage note during those initial bankruptcy proceedings. To that end, in May 2015, the bankruptcy court ordered John to turn over the mortgage note. This order was not appealed.

John and Elise did, however, file a separate adversary proceeding in bankruptcy court on January 29, 2018. Their complaint alleged that during the proceedings before the Louisiana court, Appellees committed bribery, witness tampering, fraud, and extortion, among many other crimes,2 as well as defamation, breach of fiduciary duty, and abuse of process. Also named as a

defendant in this suit was the Office of the U.S. Trustee, who Appellants contend failed to respond to complaints made about the Chapter 7 Trustee and his attorneys. As relief, Appellants sought "the return of [the] Promissory Note." In addition to dismissing all of John and Elise's claims, the bankruptcy court granted Appellees' requested

Barton injunction, prohibiting all future claims related to the ownership of the note. The district court affirmed, and John and Elise filed their notice of appeal with this court.

Despite the injunction, John and Elise filed anew in the Eastern District of Louisiana. The complaint was styled as a petition for nullity, damages, and permanent injunctive relief. Here, Appellants complained that "defendant Lake Villas... violated the automatic stay in pursuing the state court litigation, and therefore the state court judgment awarding ownership of the note to the debtor is void ab initio." The district court transferred this case to the bankruptcy court, which dismissed their claim. The district court affirmed, and John and Elise appealed this decision, as well. The two appeals were consolidated before this court.

II.

"When a court of appeals reviews the decision of a district court, sitting as an appellate court, it applies the same standards of review to the bankruptcy court's finding of fact and conclusions of law as applied by the district court." Jacobsen v. Moser (In re Jacobsen), 609 F.3d 647, 652 (5th Cir. 2010) (citation and internal quotation marks omitted). Thus, in accordance with the district court, "conclusions of law are reviewed de novo, findings of fact are reviewed for clear error, and mixed questions of fact and law are reviewed de novo." In re Nat'l Gypsum Co., 208 F.3d 498, 504 (5th Cir. 2000). We review the issuance of injunctions for an abuse of discretion. See Doran v. Salem Inn, Inc., 422 U.S. 922, 931-32 (1975).

III.

On appeal, Appellants present — with few citations to the record — a myriad of arguments, but ultimately to no avail. First, we agree with the bankruptcy court that its "order directing [John] to turn the note over to the bankruptcy trustee... became a final order when the motion to reconsider was denied and no appeal was taken." Thus, Appellants' attempt to undo the turnover order in these separate proceedings is barred by principles of res judicata. Maggio v. Zeitz, 333 U.S. 56, 68 (1948) ("the turnover proceeding is a separate one and, when completed and terminated in a final order, it becomes res judicata and not subject to collateral attack").

Second, as to the remaining allegations against Grodksy's bankruptcy trustee and his attorneys, we also agree that Appellees are immune from liability because they "acted within the scope of their duties during the events described in the complaint, and

that the plaintiffs' allegations are not based in fact." C.f., Matter of Ondova Ltd. Co., 914 F.3d 990, 993 (5th Cir. 2019) (per curiam). And, in light of the extensive litigation, the bankruptcy court was well within its discretion to maintain jurisdiction over the adversary proceedings. See Matter of Querner, 7 F.3d 1199, 1202 (5th Cir. 1993); Matter of Carroll, 850 F.3d 811, 816 (5th Cir. 2017) (per curiam). Finally, although Appellants scarcely defend their second appeal in the briefs, we find that the bankruptcy court was correct in holding that the suit violated its permanent injunction barring John and Elise from relitigating the promissory note and that it lacked any underlying merit.

IV.

Because we find no reversible error in the bankruptcy court's orders, the district courts' judgments are AFFIRMED in all respects.

Footnotes:

*. Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

1. The Louisiana First Circuit court of appeal dismissed John's appeal, and the Louisiana Supreme Court denied further review. Lake Villas No. II Homeowners' Ass'n, Inc. v. LaMartina, 189 So.3d 1070 (La. 2016). Later writ applications were also denied. See, e.g., Lake Villas No. II Homeowners Ass'n, Inc. v. Lamartina, 2018-0699 (La. App. 1 Cir. 9/17/18).

2. In August 2016, John filed a RICO complaint in the district court against the trustee, Lake Villas, and their attorneys. Howell v. Adler, No. 16-14141, 2017 WL 1064974 (E.D. La. Mar. 21, 2017). The court dismissed these claims, holding that the Barton doctrine precluded Elise and John from filing claims based on defendants' "acts performed 'within the context of [their] role of recovering assets for the estate'" without receiving permission from the bankruptcy court. Id. at *2-3 (internal citations omitted). The court also found that John failed to plead adequate facts to state a RICO claim. Id. at*3-6. This judgment was not appealed, and to the extent Appellants attempt to revive their RICO complaint, such a claim is barred by res judicata. Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.), 163 F.3d 925, 934 (5th Cir. 1999) (Res judicata "bars the litigation of claims that either have been litigated or should have been raised in an earlier suit.").

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
IN RE: HOWELL
CIVIL ACTION No. 19-10068
SECTION I

ORDER & REASONS

Before the Court is an appeal[1] filed by John LaMartina Howell and Elise LaMartina (collectively, the "appellants") from a judgment issued by the United States Bankruptcy Court. The bankruptcy court dismissed the appellants' complaint and permanently enjoined them from litigating certain issues in any court except the bankruptcy court.[2]

This Court's jurisdiction to review the bankruptcy court's judgment derives from 28 U.S.C. § 158(a)(1). "[C]onclusions of law are reviewed *de novo*, findings of fact are reviewed for clear error, and mixed questions of fact and law are reviewed *de novo*." *In re Nat'l Gypsum Co.*, 208 F.3d 498, 504 (5th Cir. 2000). Having reviewed the record in this matter, the bankruptcy court's amended judgment, the parties' briefing, and the applicable law, the Court concludes that the bankruptcy court's factual findings are "plausible in light of the record read as a whole," *In re Ramba, Inc.*, 416 F.3d 394, 402 (5th Cir. 2005), and that its application of the law to the facts is correct: pursuant to both the *Rooker-Feldman* and *Barton* doctrines, the appellants' complaint was rightfully dismissed and the permanent injunction is warranted.

[1] R. Doc. No. 1.
[2] *See* R. Doc. No. 3-1, at 246. On June 13, 2018, after a hearing on the two motions to dismiss filed by the defendant-appellees, the bankruptcy court issued its judgment. On appeal, this Court remanded the matter to the bankruptcy court to allow the bankruptcy court to issue an amended order and reasons explaining its dismissal of the plaintiff-appellants' complaint. The bankruptcy court issued its amended judgment on April 11, 2019, and the appellants timely appealed.

Accordingly,

IT IS ORDERED that the bankruptcy court's opinion is ADOPTED as this Court's own opinion, and its decision dismissing the complaint and issuing the permanent injunction is AFFIRMED.

New Orleans, Louisiana, May 31, 2019.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA
IN RE: DONALD H. GRODSKY CASE NO. 09-13383 Debtor
SECTION "B"
CHAPTER 7 ADVERSARY NO. 18-01006

JOHN LAMARTINA HOWELL and ELISE LAMARTINA
Plaintiffs

VERSUS

DAVID V. ADLER, TRUSTEE, GORDON, ARATA, MCCOLLAM, DUPLANTIS & EAGAN, LLC, FERNAND LAUDUMIEY, IV, ESQ., DAVID J. MESSINA, ESQ., LAKE VILLAS NO. 2 HOMEOWNERS ASSOCIATION, SEALE & ROSS, APLC, GLEN GALBRAITH, ESQ., LESLIE BOLNER, ESQ., DONALD GRODSKY, and OFFICE OF THE US TRUSTEE
Defendants

JUDGMENT AND PERMANENT INJUNCTION

On March 22, 2018, a Motion to Dismiss ("Adler Motion")[P-37] was filed in the above-captioned adversary proceeding ("Adversary Proceeding") by (i) David V. Adler ("Trustee"); and (ii) Gordon, Arata, McCollam, Duplantis & Eagan, LLC (now known as Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC) ("GAMB"), Fernand L. Laudumiey IV, and David J. Messina (collectively "Trustee's General Counsel").

On March 22, 2018, a Motion to Dismiss ("Seale Motion") [P-40] was filed in this Adversary Proceeding by (i) Lake Villas No. 2 Homeowners Association, Inc. ("LV2"), and (ii) Seale & Ross, A Professional Law Corporation ("Seale"), Leslie Bolner, and Glen Galbraith, (collectively "Trustee's Special Counsel"). Hereinafter, the Adler Motion and the Seale Motion will sometimes be collectively referred to as the "Motions." The Trustee, Trustee's General Counsel, Trustee's Special Counsel, and LV2 are hereinafter collectively referred to as the "Defendants."

On April 11, 2018, Elise LaMartina and John LaMartina-Howell filed (i) an Opposition to Defendants' Motion to Dismiss [P-53] opposing the Adler Motion and (ii) an Opposition to Defendants' Motion to Dismiss [P-54] opposing the Seale Motion (collectively "Oppositions").
A hearing on the Motions and the Oppositions was held on April 18, 2018 (the "Hearing"). Appearing at the Hearing were: Fernand L. Laudumiey, IV and David J. Messina, on behalf of the Trustee, GAMB, Fernand L. Laudumiey, IV, and David J. Messina; Lesli S. Bolner and Glen R. Galbraith, on behalf of Seale, LV2, Lesli S. Bolner, and Glen R. Galbraith; David V. Adler, Trustee; Glenn Schreiber, on behalf of the United States Trustee; Elise LaMartina, pro se; and John LaMartina-Howell, pro se.

After considering the pleadings, the evidence, the arguments of the parties, and the record in this case, and in light of all of the prior repetitive litigation, and finding that proper notice was given, and the Court being convinced that the Defendants are entitled to the relief prayed for in the Motions;

IT IS HEREBY ORDERED that the Motions are GRANTED, and that this Adversary Proceeding is hereby dismissed with prejudice at the plaintiffs' costs.

IT IS HEREBY FURTHER ORDERED that Elise LaMartina, John LaMartina-Howell, and Pooter T, LLC, their officers, managers, agents, servants, employees, representatives and attorneys, and any person or entity owned by, controlled by or in privity with any of the above, are hereby permanently enjoined and restrained from commencing or continuing any action or proceeding in any court, except this Court: (i)against the Trustee, the Trustee's General Counsel, or the Trustee's Special Counsel, on account of, related to or otherwise arising out of their service and actions directly or indirectly in connection with or related to this bankruptcy case as Trustee and/or as counsel to the Trustee, (ii)to assert dominion or control over property of the bankruptcy estate (including, without limitation, the Mortgage Note ("Note") secured by Condominium Unit No. 5 at 665 N. Beau Chene Dr.), and/or (iii)to affect property of the bankruptcy estate or the administration of this bankruptcy estate.

IT IS FURTHER ORDERED that Elise LaMartina, John LaMartina-Howell, and Pooter T, LLC, their officers, managers, agents, servants, employees, representatives and attorneys, and any person or entity owned by, controlled by or in privity with any of the above, are hereby permanently enjoined and restrained from commencing or continuing in this Court or in any other court, any claim or cause of action raised in this Adversary Proceeding or arising out of the same nucleus of operative facts as set forth in this Adversary Proceeding, including without limitation, any claim or cause of action relating in any way to (i) the ownership of the Note; (ii) the nucleus of operative facts surrounding the determination of ownership of the Note, litigation concerning the Note and anything arising out of that Note, and any allegations as to alleged misconduct by any of the Defendants in connection with any prior litigation relating to the ownership of the Note; and (iii) the nucleus of operative facts in any way relating to this Court's issuance of the Turnover Order entered on May 1, 2015 [P-124] ordering the turnover of the Note to the Trustee as property of the estate.

IT IS HEREBY FURTHER ORDERED that this Court retains jurisdiction to enforce and implement the terms and provisions of this Order, to compel compliance with this Order, and to impose any sanctions as may be necessary to ensure compliance with this Order.IT IS FURTHER ORDERED that counsel shall serve this order on the required parties who will not receive notice through the ECF system pursuant to the FRBP and the LBRs and file a certificate of service to that effect within three (3) days. New Orleans, Louisiana, June 13, 2018.

Jerry A. Brown U.S. Bankruptcy Judge

Additional material from this filing is available in the Clerk's Office.