

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF WASHINGTON
3

4 In re:)
5 DAVID WALLACE BAYS,) Main Case No. 01-05127-JAR7
6)
7 Debtor.)
8 _____)
9 KELLY CASE,) Adversary No. A03-00237-JAR
10)
11 Plaintiff,)
12 vs.)
13 ANTHONY GRABICKI,)
14 SUCCESSOR BANKRUPTCY TRUSTEE)
15 FOR THE ESTATE OF DAVID BAYS)
16)
17 Defendants.)

DECISION:
"CORE" vs "NON-CORE;"
RIGHT TO JURY TRIAL

15 The remaining dispute involves the parties rights in real estate located in Kettle Falls,
16 Washington. Kelly Case seeks to quiet title as to his interest in the Kettle Falls property. Mr. Grabicki,
17 the trustee of the bankruptcy estate of David Bays, seeks a determination that Kelly Case's interest in
18 the Kettle Falls property has been forfeited. Disputes have arisen as to whether the issues remaining
19 before the court are "core" or "non-core" and whether Kelly Case has a right to trial by jury. The parties
20 have submitted pleadings and briefing on these issues.

21
22 CORE vs. NON- CORE

23 The bankruptcy court derives its jurisdiction from 28 U.S.C. § 157(a). This provision grants
24 the district court authority to refer "cases under Title 11" and "proceedings arising under Title 11" or
25 "arising in" or "related to" a case under Title 11 to the bankruptcy courts in the district. This was

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1 accomplished in the Eastern District of Washington by Amended General Order dated May 8, 1985.
2 "Cases under Title 11" refer to the bankruptcy cases in which the debtor seeks relief under the
3 Bankruptcy Code. In this instance it is David Bays' bankruptcy case. The "proceedings" referred to
4 in this statute are law suits filed in bankruptcy court, referred to in the Federal Rules of Bankruptcy
5 Procedure as adversary proceedings. This law suit filed by Linda Bays and Kelly Case, referencing
6 multiple causes of action, is an adversary proceeding.

7 Section 28 U.S.C. § 157(b) provides that bankruptcy judges may "hear and determine" all
8 cases under Title 11 and all core proceedings "arising under Title 11," or "arising in" a case under
9 Title 11. These judgments are subject to appeal as final judgments to the district court or to a
10 bankruptcy appellate panel, pursuant to 28 U.S.C. § 158.

11 Decisions made in core proceedings are treated differently than decisions made in the non-
12 core proceedings which are "related to" a case under Title 11. In these "related to" proceedings, the
13 bankruptcy judge makes proposed findings of facts and conclusions of law for de novo review by the
14 district court. 28 U.S.C. § 157(c)(1). See In re Marshall, 600 F.3d 1037, 1053-1061 (9th Cir. 2010);
15 In re Harris, 590 F.3d 730, 736-742 (9th Cir. 2009).

16 The authority of the bankruptcy court to make a final judgment turns on whether the matter is
17 a core proceeding. Section 28 U.S.C. § 157 (b)(2) provides a non-inclusive list of core proceedings.
18 Of the sixteen listed proceedings, the following three are applicable to the issues before the court:

- 19 (A) Matters concerning the administration of the estate;
20 (K) Determinations of the validity, extent, or priority of liens;
21 (O) Other proceedings affecting the liquidation of the assets of the estate...

22 The fact that state law may have some affect on the resolution is not determinative of whether a
23 matter is "core" or "non-core." 28 U.S.C. § 157(b)(3).

24 Kelly Case seeks a determination that his interest in the subject real estate was not forfeited.
25 The trustee contends that Kelly Case's interest in real estate has been forfeited and that it is property

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1 of the debtor's estate. Further, the trustee contends that the real estate may be sold and its proceeds
2 be distributed to the debtor's creditors pursuant to the terms of the Bankruptcy Code.

3 Section 28 U.S.C. § 157(b)(2)(A) and (O) are broadly written. The Ninth Circuit has referred
4 to them as "catchall" provisions that must be narrowly interpreted and, applied consistently with
5 their language. In re Harris, 590 F.3d 730, 740 (9th Cir 2009).

6 The trustee seeks to enforce his interest acquired through the dissolution decree and confirm
7 his post filing forfeiture action. These activities all clearly "arise in" the bankruptcy case of David
8 Bays. These actions exist only because of the bankruptcy case, for without a bankruptcy case there
9 would be no bankruptcy trustee. They concern administration of the estate, that being the trustee's
10 attempted forfeiture of the real estate contract in furtherance of his attempt to liquidate assets of the
11 bankruptcy estate. These are activities that are not merely ancillary or incidentally related to the
12 bankruptcy case and its administration, but rather they are at the heart of the jurisdictional language
13 of 28 U.S.C. § 157(b)(2)(A) and (O).

14 28 U.S.C. § 157(b)(2)(K), declares a proceeding for "determination of the validity, extent, or
15 priority of liens" a "core" proceeding. This court possesses **in rem** jurisdiction, which is based on
16 control over assets of the bankruptcy estate. Tennessee Student Assistance Corp. v. Hood, 541 U.S.
17 440, 124 S. Ct. 1905 (2004).

18 The Kettle Falls property is property of the bankruptcy estate. As of the commencement of a
19 voluntary case under Title 11 an estate is created which "is comprised of all the following property,
20 wherever located *and by whomever held*: (1) ...all legal or equitable interests of the debtor in
21 property as of the commencement of the case " and "(7) [a]ny interest in property that the estate
22 acquires after the commencement of the case ..." 11 U.S.C. § 541(a)(1), (7) (emphasis added).
23 Upon filing the bankruptcy case, David Bays had a contested interest in the Kettle Falls property.
24 This interest was property of the estate under 11 U.S.C. § 541(a)(1). Once the divorce court
25 determined the nature and extent of that interest, it became property of the estate under 11 U.S.C. §

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1 541(a)(7), “any interest in property that the estate acquires after the commencement of the case.”
2 The dissolution decree found that David Bays held a vendor’s interest in the Kettle Falls property.
3 This interest is property of the David Bays bankruptcy estate. The bankruptcy court has **in rem**
4 jurisdiction over this property.

5 Kelly Case claims ownership in this property upon relying on a quit claim deed which was
6 given to secure an obligation owed by Linda Bays to Kelly Case. This quit claim deed constitutes a
7 mortgage. Gassett v. Farmers Insurance Co., 133 Wash. 2d 954, 966, 948 P.2d 1264, 1270 (1997);
8 Kendrick v. Davis, 75 Wash. 2d 456, 452 P.2d 222 (1969). The evidence supporting this conclusion
9 is clear and convincing. Kelly Case’s claim against the Kettle Falls property constitutes a lien. A
10 lien is defined in 11 U.S.C. § 101(37) as a “charge against or interest in property to secure payment
11 of a debt or performance of an obligation.” Subsection 28 U.S.C. § 157(b)(2)(K) specifically
12 includes proceedings for “determination of the validity, extent or priority of liens” as core
13 proceedings. Whether the trustee has successfully forfeited Kelly Case’s interest in the Kettle Falls
14 property, and, if not forfeited, the extent of Kelly Cases’s lien on the property are core issues within
15 the specific terms of § 157(b)(2)(K).

16 The issues before the court fall literally within the essence of § 157(b)(2)(A) and (O). In re
17 Harris, 590 F.3d 730, 740 (9th Cir. 2009). They are specifically within the terms of § 157(b)(2)(K).
18 This is a core proceeding. The court’s decision will be a final judgment reviewable by appeal 28
19 U.S.C. § 158(a)(1) rather than proposed findings and conclusions subject to de novo review, 28
20 U.S.C. § 157(c)(1).

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22 The Trustee has attempted to forfeit the interests in the Kettle Falls property of Linda Bays
23 and all parties claiming through her. Kelly Case claims an interest in the property derived by a quit
24 claim deed from Linda Bays. Kelly Case joined in this adversary proceeding as a plaintiff seeking to
25 quiet his title in the property against the claim of the trustee that his interest has been forfeited.

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1 Neither the trustee or Kelly Case are in possession of the real estate. Kelly Case has demanded that
2 this quiet title issue be tried by a jury. The trustee has objected.

3 The Seventh Amendment to the United States Constitution provides in part:

4 In Suits at common law, where the value in controversy shall exceed twenty
5 dollars, the right of trial by jury shall be preserved, ...

6 The United States Supreme Court has stated:

7 We have consistently interpreted the phrase "Suits at common law" to refer to
8 "suits in which legal rights were to be ascertained and determined, in
9 contradistinction to those where equitable rights alone were recognized, and equitable
10 remedies were administered." *Parsons v. Bedford*, 3 Pet. 433, 447, 7 L.Ed. 732
11 (1830). Although "the thrust of the Amendment was to preserve the right to a jury
12 trial as it existed in 1791," the Seventh Amendment also applies to actions brought to
13 enforce statutory rights that are analogous to common-law causes of action ordinarily
14 decided in English law courts in the late 18th century, as opposed to those
15 customarily heard by courts of equity or admiralty. *Curtis v. Loether*, 415 U.S. 189,
16 193, 94 S.Ct 1005, 1007, 39 L.Ed.2d 260 (1974).

17 Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 at 41, 109 S.Ct 2782 at 2790 (1989).

18 The form of our analysis is familiar. "First, we compare the statutory action to
19 18th-century actions brought in the courts of England prior to the merger of the courts
20 of law and equity. Second, we examine the remedy sought and determine whether it
21 is legal or equitable in nature." *Tull v. United States*, 481 U.S. 412, 417-418, 107
22 S.Ct. 1831, 1835, 95 L.Ed.2d 365 (1987) (citations omitted). The second stage of this
23 analysis is more important than the first. *Id.*, at 421, 107 S.Ct., at 1837. If, on
24 balance, these two factors indicate that a party is entitled to a jury trial under the
25 Seventh Amendment, we must decide whether Congress may assign and has assigned
26 resolution of the relevant claim to a non-Article III adjudicative body that does not
27 use a jury as factfinder.

28 *Ibid* 492 U.S. 42, 109 S.Ct. 2790.

This is an action for quiet title, the remedy for which has been administered by the courts of
equity, not the law courts, since the time of the adoption of the United States Constitution.

Pomeroy's Equity Jurisprudence and Equitable Remedies, § 2158, 4th ed. (1919). This view has
been adopted not only by the federal courts but also by the State of Washington going back to
territorial days. Durrah v. Wright, 115 Wash.App. 634 at 641, 63 P.3d 184 at 188 (2003); Finch v.

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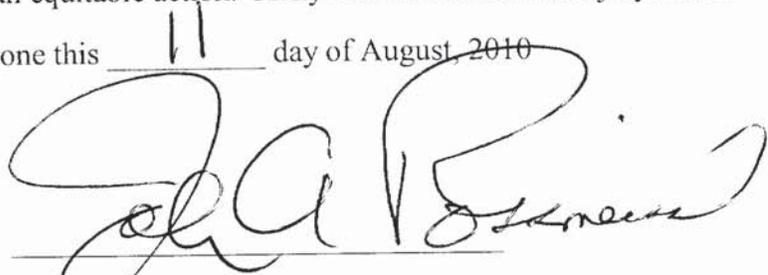
1 Matthews, 74 Wash.2d 161 at 166, 443 P.2d 833 at 837 (1968). The law is clear that if the remedy
2 sought is to quiet title, as in this adversary proceeding, it is not to be tried by a jury. Durrah v.
3 Wright, 115 Wash.App. at 640, 93 P.3d at 188.

4 Kelly Case is not entitled to a jury trial on the issues before the court.

5 CONCLUSION

6 This adversary proceeding is a core matter within the terms of 28 U.S.C. § 157. The quiet
7 title action before the court is an equitable action. Kelly Case's demand for a jury trial is denied.

8 Done this 11 day of August, 2010

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12 JOHN A. ROSSMEISSL
13 U.S. BANKRUPTCY JUDGE

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