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U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:)
)
THE CATHOLIC BISHOP OF SPOKANE)
a/k/a THE CATHOLIC DIOCESE OF)
SPOKANE, a Washington)
corporation sole,)
)
Debtor.)

No. 04-08822-PCW11
Chapter 11

MICHAEL SHEA,)
)
Plaintiff,)

Adversary No. A04-00291-PCW

vs.)
)
THE CATHOLIC BISHOP OF SPOKANE)
a/k/a THE CATHOLIC DIOCESE OF)
SPOKANE, a Washington)
corporation sole,)
)
Defendants.)

MEMORANDUM DECISION RE:

- 1) PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (#40)
- 2) DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT (#62)
- 3) DEFENDANT'S MOTION TO DISMISS (#64)

This adversary proceeding was commenced on December 22, 2004, approximately three weeks after the commencement of the Chapter 11 case. The plaintiff holds a disputed unliquidated claim arising from childhood sex abuse suffered by plaintiff. The abuser was a priest associated with the defendant and allegedly the negligent acts of the defendant allowed the abuse to occur. The Complaint names only the debtor as a defendant but alleges that all real and personal property held by parishes and other members of the diocesan family is property of the bankruptcy estate under

1 11 U.S.C. § 541 and thus subject to claims of creditors. The legal
2 issues in this adversary proceeding are nearly identical with
3 those in the adversary proceeding *Committee of Tort Litigants v.*
4 *The Catholic Diocese of Spokane, et al.*, Adversary No. 05-80038-PCW
5 (hereinafter "Related Adversary").

6 I.

7 PROCEDURAL HISTORY

8 On April 28, 2005, the plaintiff filed a Motion for Summary
9 Judgment identifying 21 parcels of real property (hereinafter
10 "Disputed Real Property") for which the deeds reflect fee simple
11 title held by the Diocese.¹ Plaintiff seeks a determination that
12 those parcels constitute property of the estate which is contrary
13 to debtor's assertion that it holds only bare legal title. The
14 debtor has asserted in its Schedules that the Disputed Real
15 Property and other real and personal property is held for the
16 benefit of the parishes or other members of the diocesan family.

17 On May 27, 2005, the defendant filed a Motion to Dismiss
18 alleging that the plaintiff has no standing to bring this action
19 under Fed. R. Bank. P. 7012(b), which incorporates Fed. R. Civ. P.
20 12(b)(1) and (6). Defendant contends that no case or controversy
21 exists, thus the Court lacks subject matter jurisdiction. On the
22 same day, the debtor filed its Cross-Motion for Summary Judgment
23 with supporting brief. The hearing on those dispositive motions
24 occurred June 27, 2005 simultaneously with the hearing in the
25 Related Adversary.

26 _____
27 ¹The plaintiff's Motion for Partial Summary Judgment in the
28 Related Adversary involves the same 21 parcels of real estate plus
an additional parcel.

1 II.

2 DEFENDANT'S MOTION TO DISMISS

3 The defendant firstly seeks dismissal on the basis that the
4 plaintiff did not file a response to the defendant's Motion to
5 Dismiss filed on May 27, 2005. The Scheduling Order previously
6 entered in this proceeding required plaintiff to file its response
7 to any jurisdictional motions by June 10, 2005. (Scheduling Order,
8 Adversary Docket No. 52). The plaintiff filed a memorandum of
9 authorities on June 10, 2005 which was captioned as a response to
10 defendant's Motion for Summary Judgment and also states it is a
11 reply to defendant's response to the plaintiff's initial Motion for
12 Summary Judgment. It was not designated as a reply to the
13 defendant's Motion to Dismiss. The memorandum of authorities
14 does, however, in a rather oblique manner, discuss the arguments
15 raised in the Motion to Dismiss. The defendant did not file a
16 memorandum of authorities or other pleading designated as a reply
17 to the plaintiff's initial Motion for Summary Judgment.

18 A Motion to Dismiss with the same legal issues was filed in
19 the Related Adversary by defendant in that proceeding with all
20 issues fully briefed and addressed in that case. The motions in
21 this proceeding rely in part upon declarations filed in the Related
22 Adversary and refer to memorandums of authority filed in that
23 adversary. At oral argument, it was apparent that all the parties
24 in both cases had divided oral argument of the common issues
25 without distinguishing between the two adversary proceedings. This
26 was a proper manner in which to proceed, was efficient, and did not
27 harm or prejudice any party as no party was surprised by the
28 advancement of a new legal argument.

1 In reality, both parties have combined all arguments in
2 several responsive briefs and memoranda filed since the May 11,
3 2005 Scheduling Order. Neither party should be penalized for the
4 fact that there may be no specific pleading captioned as a specific
5 response to a specific motion so long as all the issues have been
6 addressed.

7 III.

8 FED. R. CIV. P. 12(b)(6) STANDING ISSUE

9 Secondly, the defendant seeks dismissal on jurisdictional
10 grounds. The standing issue presented in this adversary differs
11 slightly from the very similar standing issue presented in the
12 Related Adversary. The plaintiff in that Related Adversary is an
13 officially appointed Tort Litigants' Committee (hereinafter "TLC")
14 composed of several individuals who, as did the plaintiff in this
15 proceeding, suffered childhood sex abuse by a priest. The members
16 of the TLC had commenced various law suits against the debtor for
17 damages pre-petition. The TLC was formed February 2, 2005,
18 approximately a month and a half after the commencement of this
19 adversary. (Appointment of Committee of Tort Litigants in a
20 Chapter 11 Reorganization Case, Main Case Docket No. 206). At the
21 same time as the TLC was formed, the original Tort Claimants'
22 Committee (hereinafter "TCC") was reconstituted to include only
23 claimants who had suffered childhood sex abuse but had not
24 commenced litigation pre-petition. (Reconstitution of and
25 Appointment of Committee of Tort Claimants in a Chapter 11
26 Reorganization Case, Main Case Docket No. 205). After it was
27 appointed, the TCC sought to intervene in this adversary and the
28 Related Adversary. The intervention was denied. Thus, the

1 analysis of standing differs slightly in this adversary from the
2 analysis in the Related Adversary in which the plaintiff is an
3 officially appointed Creditors' Committee.²

4 The debtor argues that plaintiff has no standing to pursue
5 this litigation as the Bankruptcy Code does not authorize the
6 plaintiff to do so and because no case or controversy exists.

7 **A. Standing Under the Code.**

8 The Diocese contends that standing does not exist under the
9 Bankruptcy Code. It relies on *Hartford Underwriters Ins. Co. v.*
10 *Union Planters Bank, N.A.*, 530 U.S. 1, 120 S.Ct. 1942, 147 L.Ed.2d
11 1 (2000) for its conclusion that the plaintiff lacks standing to
12 commence this adversary proceeding.

13 The discussion of this contention in the Related Adversary is
14 applicable in this case. Although plaintiff herein is a single
15 claimant rather than an officially appointed creditors' committee,
16 the rationale for allowing creditors to dispute a debtor's
17 identification of property of the estate is the same.

18 Plaintiff has standing under the Bankruptcy Code.

19 **B. Lack of Subject Matter Jurisdiction.**

20 The Motion to Dismiss also raises jurisdictional issues
21 relating to standing. The Diocese seeks dismissal as (a) this is
22 a non-core proceeding, and (b) the Court lacks subject matter
23 jurisdiction because there is no case or controversy; and (c)
24 because the constitutional requirements for standing have not been
25

26
27 ²Court records reflect that the plaintiff herein is a member
28 of the TLC. No one has raised an issue relating to the right of a
single member of an officially appointed committee to maintain an
adversary proceeding independently of the committee as a whole.

