United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: Bank One, NA v. Alexander Knopfler, et al. (In re Robert A. Holstein)

Bankruptcy No. 00 B 18138

Adversary No. 03 A 00638

Date of Issuance: January 5, 2004

Judge: A. Benjamin Goldgar

Appearance of Counsel:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 7
	)	
ROBERT A. HOLSTEIN,	)	No. 00 B 18138
	)	
Debtor.	)	Judge Goldgar
	)	
	)	
BANK ONE, NA, as successor by merger to American National Bank & Trust Company of Chicago, a national banking association,	)	
	)	
Plaintiff,	)	
v.	)	No. 03 A 00638
	)	
ALEXANDER S. KNOPFLER, not individually, but solely as Chapter 7 Trustee for Robert A. Holstein; DAVID ABRAMS. not individually, but solely as Liquidating Chapter 11 Plan Trustee for Barbara W. Stackler; and ARON D. ROBINSON,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Before the court is Bank One's motion for summary judgment on its adversary complaint seeking various declarations about the nature of the Bank's lien, the lien's priority, and the amount of the Bank's claim in this long-running chapter 7 bankruptcy case. As set forth below, the motion for summary judgment is denied. Because the pleadings and the motion show there is no case or controversy between the Bank and

defendant David Abrams, however, the complaint against Abrams will be dismissed for lack of jurisdiction.

1. Facts

From the parties' submissions, there appear to be no factual issues: the facts have either been admitted, have been denied in impermissible ways and so are deemed admitted, or are unsupported by any citation to supporting material and so are not cognizable.[1] Because of the nature of the court's decision, however, the otherwise elaborate facts need only be outlined.

a. Holstein's Obligations to the Bank

Debtor Robert Holstein was a name partner in Holstein, Mack & Klein ("HMK"),

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[1] Mirroring the district court's local rules, this court's local rules set out a procedure for summary judgment motions. The movant must submit a statement of facts with citations to material supporting each fact. L.R. 7056-1(B). The opposing party must then respond to each fact, admitting or denying it and including "in the case of any disagreement" references to supporting evidentiary material. L.R. 7056-2(A)(2)(a). The opposing party must also submit his own statement offering any additional facts, again with citations to supporting material, L.R. 7056-2(A)(2)(b), to which the moving party may respond, L.R. 7056(C). Facts not denied in either statement are deemed admitted. L.R. 7056-1(C), 7056-2(B).

A party opposing summary judgment must admit or deny the movant's facts. He cannot get away with saying he has "insufficient knowledge" to admit or deny, as the Trustee does. *Id.* Nor can he dispute facts – or assert new ones – with no citation to supporting material, as both the Trustee and Robinson do. *Davis,* 244 B.R. at 781-82. The summary judgment procedure is "not a mere technicality," *Davis v. Illinois St. Police Fed. Credit Union,* 244 B.R. 776, 782 (Bankr. N.D. Ill. 2000), and its requirements are strictly enforced, *McGuire v. United Parcel Service,* 152 F.3d 673, 675 (7th Cir. 1998).

a Chicago law firm.[2] HMK's practice consisted principally of plaintiff personal injury litigation, including class actions, performed on a contingent fee basis.

Beginning in 1989, American National Bank & Trust Company of Chicago, now known as Bank One, provided operating capital to HMK. In particular, between May and October 1995, the Bank lent HMK an additional $1.7 million, for which HMK executed promissory notes. HMK granted the Bank a security interest in all its assets in exchange for the loans, and a UCC-1 financing statement was filed with the Illinois Secretary of State. Holstein personally guaranteed HMK's obligations to the Bank, as did two other HMK partners. The security agreement, the promissory notes and the personal guaranty each entitled the Bank to recover its attorneys' fees should collection efforts prove necessary.

Not long after the 1995 loans were made, HMK defaulted on its obligations, and the Bank terminated the firm's line of credit. In May 1996, the Bank brought an action against HMK on the promissory notes and a separate action against Holstein on his guaranty. Both actions were filed in Illinois state court.

In November 1996, HMK dissolved. Holstein then formed a new law firm called Robert A. Holstein & Associates, P.C. ("RAHA"). Some of HMK's cases were

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[2] Since the Bank's facts begin *in medias res*, certain indisputable background facts are drawn from the court's own records and from the opinions in *American Nat'l Bank & Trust Co. v. Robert A. Holstein & Assoc. (In re Holstein, Mack & Klein)*, 232 F.3d 611 (7th Cir. 2000), and *Jeffrey M. Goldberg & Assoc. v. Holstein (In re Robert A. Holstein)*, 299 B.R. 211 (Bankr. N.D. Ill. 2003).

transferred to RAHA, and RAHA substituted for HMK as counsel in those cases. RAHA only operated for about a year. Upon RAHA's demise, Holstein went into practice with Barbara Stackler, working for a law firm called Stackler & Holstein.

In January 1997, the Bank entered into an elaborate settlement agreement with HMK, Holstein, RAHA, and others. The Bank agreed to hold off prosecuting its state court actions against HMK and Holstein. In return, Holstein and others agreed (among other things) to repay the Bank's obligations under the promissory notes by June 30, 1997. RAHA granted the Bank a security interest in certain fees RAHA earned on former HMK cases during the period of the agreement. And Holstein granted the Bank a security interest in his personal assets. UCC-1 financing statements with respect to the RAHA and Holstein security interests were filed with the Illinois Secretary of State.

Holstein, RAHA, *et al.* were unable to make a go of the settlement agreement, however, and they defaulted on their obligations. In September 1997, a former HMK partner filed an involuntary chapter 7 petition against HMK, placing it in bankruptcy. With the settlement agreement now out of the picture, the Bank moved for a default judgment in the now-consolidated civil actions. In October 1998, the state court entered a judgment for $748,006.39, plus attorneys' fees and costs, in favor of the Bank and against Holstein.

The Bank began trying to collect the judgment and in December 1998 served both RAHA and Holstein with citations to discover assets. Upon discovering certain assets,

the Bank filed a motion for their turnover which at the instance of the state court became a complaint for turnover. Two days before the trial on the Bank's complaint for turnover, Holstein sought bankruptcy protection under chapter 7.[3]

After the Bank sought and received relief from the stay, the matter went to trial in June 2000. In October 2000, the state court entered judgment in the Bank's favor, finding among other things that since 1995 the Bank had incurred $554,321.35 in attorneys' fees and $41,219.11 in costs in its pursuit of Holstein. The balance on the Bank's judgment as of August 22, 2000, the court found, was $745,566.68.

b. The Current Disputes

The current disputes are two. First, the Trustee and the Bank disagree about the Bank's rights to attorneys' fees Holstein earned from cases on which he worked. The contingent fee nature of Holstein's legal work and his peripatetic career (post-HMK) complicate matters. Some of the cases that Holstein handled at HMK migrated with him to RAHA, to Stackler & Holstein, and beyond, and Holstein worked on the cases at several different firms. With the cases finally coming to an end, the fees are at last being paid. But those fees were earned at various times in the past, causing the parties here to quarrel over just who has what kind of claim to what and for how much.

Second, the Trustee and the Bank disagree about the amount of attorneys' fees – if

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[3] Holstein has since been denied a discharge. *See Jeffrey M. Goldberg & Assoc. v. Holstein (In re Robert A. Holstein)*, 299 B.R. 211 (Bankr. N.D. Ill. 2003).

any – that the state court awarded the Bank. The Trustee contends that the state court never actually awarded the Bank anything except "attorneys' fees" generally, an award the Trustees sees as worthless. The Bank naturally takes issue with this, pointing to the judgment order following the trial on the complaint for turnover. That order mentions specific sums.

c. The Adversary Complaint and Summary Judgment Motion

To resolve these disputes – disputes both sides insist must be resolved to end Holstein's seemingly endless bankruptcy – the Bank filed an adversary proceeding on February 27, 2003, consisting of a single-count "complaint to determine validity, priority and extent of lien."

In its complaint, the Bank seeks a judgment (1) establishing the amount of its claim; (2) determining the validity, priority and extent of its lien on fees from two cases; (3) directing the Trustee to turn over fees he holds from those cases; and (4) determining the validity, priority and extent of the Bank's lien in any other litigation in which HMK, RAHA or Holstein might have a quantum meruit claim for fees or costs. Named as defendants are Alexander Knopfler, the trustee in the Holstein bankruptcy; Aron Robinson, a lawyer who worked for HMK and RAHA and who is a creditor in the Holstein bankruptcy; and David Abrams, trustee of the Stackler liquidating trust.[4]

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[4] Stackler also sought bankruptcy protection in 2000. The liquidating plan in her chapter 11 case was confirmed in July 2001, and she received a discharge in November of that year.

The Holstein Trustee, Robinson and Abrams have each answered the complaint. In their answers, the Trustee and Robinson have admitted some of the complaint's allegations, denied others, and disputed the Bank's right to relief. Abrams, on the other hand, has admitted in his answer most of the complaint's allegations and then added: "The Stackler Plan Trustee does not object to the Bank being granted the relief it requests in it[s] Complaint."

In June 2003, the Bank moved for summary judgment on its complaint – but not, interestingly, on all of it. Although the motion itself appears to request complete relief, the memorandum in support of the motion makes clear that the Bank has lesser goals. In it, the Bank declares that it "seeks only partial summary judgment against Robinson." The Bank explains: "Robinson contends that his lien has priority over the Bank's lien in a portion of the potential property of the Debtor's bankruptcy estate. That issue is not addressed in the present motion for summary judgment but is specifically reserved."

The Trustee and Robinson both filed memoranda opposing certain aspects of the relief sought in the motion. Given his answer to the Bank's complaint, Abrams perhaps understandably did not bother to respond to the motion. In its own memorandum, the Bank observed that Abrams "does not contest the relief the Bank seeks in this action," adding that he "has not asserted any interest in property of the estate in the underlying bankruptcy case."

The summary judgment motion is now fully briefed and awaiting decision. As

discussed below, the motion must be denied on purely procedural grounds: the Bank has moved for "partial summary judgment," but federal practice does not permit a motion for partial summary judgment on fewer than all issues in a single-count complaint. The motion, supporting memorandum and responses do, however, permit the court to resolve all matters involving defendant Abrams. Because Abrams is not only content to let the Bank have the relief it wants but also asserts no interest in property of the bankruptcy estate, there is no case or controversy between the Bank and Abrams. As to Abrams, then, the Bank's complaint must be dismissed.

2. Analysis

The summary judgment standard is familiar. Summary judgment is appropriate if there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c) (made applicable in Fed. R. Bankr. P. 7056); *Estate of Allen v. City of Rockford,* 349 F.3d 1015, 1019 (7th Cir. 2003). On a motion for summary judgment, "the court has one task and one task only: to decide, based on the evidence of record, whether there is any material dispute of fact that requires a trial." *Payne v. Pauley,* 337 F.3d 767, 770 (7th Cir. 2003) (internal quotation omitted).

a. The Procedural Problem

Here, ironically, summary judgment must be denied despite the apparent absence of factual disputes. The reason is the nature of the Bank's complaint and its motion. The

complaint contains a single claim rather than multiple counts alleging multiple claims. Despite the single claim, however, the complaint raises a variety of issues.[5] The motion, in turn, seeks summary judgment on most but not all of those issues. With respect to defendant Robinson, the Bank says, certain issues are "specifically reserved." Thus, the Bank characterizes its motion as one for "partial summary judgment."

At first blush, this seems not only a reasonable way to proceed but one permissible under Rule 56. Rule 56(a) permits "[a] party seeking to recover upon a claim" to move for summary judgment "upon all *or any part thereof*." Fed. R. Civ. P. 56(a). In this case, the Bank wants summary judgment on "part" of its claim. Rule 56(d) arguably contains additional support for the Bank's effort, holding out the possibility that a judgment might be rendered upon something other than "the whole case or for all the relief asked." Fed. R. Civ. P. 56(d).

The case law, however, is squarely against the Bank. The district court has held repeatedly that summary judgment is unavailable on part of a single claim. *See, e.g., Ambre v. Joe Madden Ford,* 881 F. Supp. 1187, 1193 (N.D. Ill. 1995); *Quintana v. Byrd,* 699 F. Supp. 849, 850 (N.D. Ill. 1987); *Capitol Records, Inc. v. Progress Record Distributing, Inc.,* 106 F.R.D. 25, 28 (N.D. Ill. 1985). The decisions reason that Rule 56 contemplates entry of a "judgment," and Rule 54(a) defines a "judgment" as an order that can be

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[5] The court offers no opinion on whether the Bank's complaint is properly pleaded in this respect or could have been pleaded differently. *See* Fed. R. Civ. P. 10(c) (made applicable in Fed. R. Bank. P. 7010) (discussing when separate counts are appropriate).

appealed. An order disposing of fewer than all claims in a case is appealable (at least in theory), *see* Fed. R. Civ. P. 54(b); an order disposing of fewer than all issues in a claim is not. *See generally Capital Records,* 106 F.R.D. at 28-29. And if the district court decisions are not enough, the court of appeals reached the same conclusion about Rule 56 in *Commonwealth Ins. Co. v. O. Henry Tent & Awning Co.,* 266 F.2d 200, 201 (7th Cir. 1959), and has not examined the issue since. Its decision, of course, is binding.

There is some suggestion in the cases that in this situation a court might still rule on the ill-fated summary judgment motion. The court would do so, not by entering judgment (which it cannot do), but rather by treating the motion as one *in limine* and so narrowing the issues for trial. That way, something could still be salvaged from the work the parties – and the court – have done. *See, e.g., Chemical Waste Management, Inc. v. Sims,* 939 F. Supp. 599, 602 (N.D. Ill. 1996).

That might be productive in some cases, but there is little to be gained by doing so here. Unlike *Sims*, this case does not involve a motion directed to a single issue that can be decided quickly and easily. The Bank has sought a ruling on a broad range of issues. Moreover, it is still not entirely clear what those issues are. The declarations requested in the Bank's motion, for example, do not match the ones sought in the complaint. Robinson also suggests there are additional issues in the case, issues the Bank has glossed over. There is, finally, a certain barebones quality to the factual presentation and legal arguments on summary judgment here: the Bank has not offered evidence to support all

of the findings it would like the court to make, and some of the parties' legal arguments are insufficiently developed. Fleshing out these matters at trial will provide the court with a more complete picture and will improve the quality of the ultimate decision.

In the exercise of its discretion, then, the court declines to treat the Bank's motion for summary judgment as a motion *in limine*. Because the Bank's motion improperly seeks summary judgment on part of the claim, the motion will be denied.[6]

b. The Jurisdictional Deficiency

Although the summary judgment motion will be denied, the pleadings and the moving papers do reveal at least one partly dispositive action the court can – and in fact must – take now. The complaint against defendant Abrams must be dismissed for lack of jurisdiction.[7]

Sometimes overlooked in discussions of bankruptcy jurisdiction are the requirements of Article III of the Constitution, which restricts the jurisdiction of federal courts to "cases" and "controversies." U.S. Const. Art III, § 2, cl. 1; *Valley Forge Christian*

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[6] Another, more logical option – allowing the Bank to amend its motion and address the issue it previously reserved, making the motion one aimed at its entire claim – is unfortunately not available. At the status hearing on October 22, 2003 when the court noted the procedural glitch in the Bank's motion, counsel for the Bank conceded that factual disputes relating to the reserved issue would necessitate a trial.

[7] This court has an obligation to examine its own subject matter jurisdiction, *Bender v. Williamsport Area School Dist.,* 475 U.S. 534, 541 (1986), even where, as here, the parties have not questioned it, *Smith v. American General Life & Accident Ins. Co.,* 337 F.3d 888, 892 (7th Cir. 2003).

College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 476 n.1 (1982). The limits Article III imposes on federal jurisdiction apply equally to bankruptcy courts.[8] *Kilen v. United States (In re Kilen)*, 129 B.R. 538, 543 (Bankr. N.D. Ill. 1991); *In re Interpictures, Inc.*, 86 B.R. 24, 28 (Bankr. E.D.N.Y. 1988).

For there to be a controversy under Article III, an action "must be definite and concrete, touching the legal relations of parties having adverse legal interests." *North Carolina v. Rice,* 404 U.S. 244, 246 (1971) (*per curiam*) (internal quotation omitted). Federal courts have the power to adjudicate only "actual disputes between adverse parties." *Richardson v. Ramirez,* 418 U.S. 24, 36 (1974); *see also GTE Sylvania, Inc. v. Consumers Union,* 445 U.S. 375, 383-84 (1980) (underscoring importance of "[t]he clash of adverse parties"). This is a "bedrock requirement." *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.,* 454 U.S. 464, 471 (1982). If there is no dispute, or if the parties are not adverse (or sufficiently adverse), there is no federal jurisdiction.

No dispute cognizable under Article III exists between the Bank and Abrams. As his answer to the complaint makes clear, Abrams is content to have the Bank receive all

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[8] This follows naturally from the bankruptcy court's status as a unit of the district court, exercising the district court's bankruptcy jurisdiction. *In re Volpert,* 110 F.3d 494, 499 (7th Cir. 1997). Necessarily, then, a bankruptcy court has no broader jurisdiction than the district court itself. *United States v. Amoskeag Bank Shares, Inc. (In re Amoskeag Bank Shares, Inc.),* 239 B.R. 653, 657 n.3 (D. N.H. 1998) (noting that a bankruptcy court cannot hear cases that a district court cannot hear).

the relief it has requested, and he has not opposed or even responded to the Bank's summary judgment motion. It is difficult under these circumstances to see what dispute the Bank has with Abrams or how the Bank and Abrams are adverse. *Cf. Grays Ferry Cogeneration Partnership v. PECO Energy Co.*, 998 F. Supp. 542, 547-48 (E.D. Pa. 1998) (finding no case or controversy over claim against defendant in part because it declined to call witnesses at hearing and informed court it did not oppose entry of injunction).

But there is more to the jurisdictional problem than merely Abrams' indifference to the Bank's complaint.[9] Abrams is the trustee of the liquidating trust in the Stackler bankruptcy. In that capacity, he does not appear to be a creditor in the Holstein bankruptcy. Nor does he have a claim to the attorneys' fees that are the focus of the current dispute: the Bank itself states that Abrams "has not asserted any interest in property of the estate in the underlying bankruptcy case," a statement Abrams has not contradicted. Abrams accordingly has no stake in the outcome of this adversary proceeding, and a decision in the Bank's favor can have no effect on Abrams' rights. "Article III denies federal courts the power 'to decide questions that cannot affect the rights of litigants in the case before them.'" *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990); *see also Grays Ferry*, 998 F. Supp. at 547-48 (finding no jurisdiction where plaintiff's success in its action could have no effect on the defendant).

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[9] If a defendant's indifference alone were enough to deprive federal courts of subject matter jurisdiction, courts would have no power to enter default judgments. They do. *See Pope v. United States*, 323 U.S. 1, 11 (1944) (making this point); 13 C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* § 3530 at 320 (1984).

Given the absence of any Article III case or controversy between the Bank and Abrams, the Bank's complaint against Abrams must be dismissed.

3. Conclusion

The motion of plaintiff Bank One, NA for summary judgment on its adversary complaint is denied. The complaint is dismissed against defendant David Abrams for lack of jurisdiction. A final pretrial order will be entered and this matter will be set for trial against the remaining parties on a date to be determined.

Dated: January 5, 2004

ENTER: ________________________________

A. Benjamin Goldgar
United States Bankruptcy Judge