



Whatever Happened to Anna Nicole Smith?

Welcome to the latest installment of Bankruptcy Bullets!

If you're a bankruptcy attorney, no doubt you groaned at the title of this edition's Bankruptcy Bullets! For nearly two years now, bankruptcy practitioners nationally have been inundated with extensive analysis of the United States Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011) and its aftermath. If you do not either practice bankruptcy law or follow each of the high court's opinions, perhaps you have no idea that Anna Nicole Smith's most lasting legacy lies in the bankruptcy court.

Anna Nicole Smith (legally Vickie Lynn Marshall), you may recall, was a blonde bombshell former playboy playmate. She was famously married to oil mogul J. Howard Marshall, 62 years her senior, who died in 1995. When Anna Nicole filed for bankruptcy shortly thereafter (prompted by her inability to satisfy a sexual harassment judgment), Pierce Marshall, J. Howard's son, filed a complaint in the bankruptcy case alleging that Anna Nicole had defamed him and that the defamation claim could not be discharged in her bankruptcy. Anna Nicole counterclaimed, alleging tortious interference with an expected gift from J. Howard's estate. The bankruptcy court granted summary judgment for Anna Nicole on the

defamation claim and awarded her \$400 million on her counterclaim against Pierce. Fifteen years and many appeals later and Howard K. Stern having taken over as executor of Anna Nicole's estate after her death in 2007, *Stern v. Marshall* marked the second time this dispute was in front of the U.S. Supreme Court.

Stern v. Marshall put two issues before the Court: Was Anna Nicole's tortious interference claim a "core proceeding" under which the bankruptcy court could issue a final judgment? And if so, did Article III of the United States Constitution bar the bankruptcy court from deciding it?

According to 28 U.S.C. §157, bankruptcy judges may hear, determine and enter an order or judgment on a "core proceeding" arising under or in a bankruptcy case. Section 157 contains a non-exclusive list of core proceedings that includes "counterclaims by the estate against persons filing claims against the estate." 28 U.S.C. §157(b)(2)(c). The justices unanimously agreed that the tortious interference claim was in fact a core proceeding.

Bankruptcy courts are, however, courts created by Congress under Article I of the Constitution, and therefore lack the independence and protection of an Article III court. Accordingly, even

though the bankruptcy court had statutory authority under 28 U.S.C. §157 to enter a final judgment on Anna Nicole's counterclaim, the Supreme Court held that the bankruptcy court lacked constitutional authority under Article III to enter a final judgment on a state law counterclaim that could not be resolved in the process of ruling on a creditor's proof of claim in the bankruptcy. Anna Nicole's tortious interference claim could not be resolved in the context of determining Pierce Marshall's defamation claim, and therefore, according to the Supreme Court, the bankruptcy court lacked authority to enter a final order on it.

The Supreme Court stressed in its 5-4 decision that *Stern v. Marshall* should be read narrowly. However, the decision leaves us to question the authority of bankruptcy courts, especially with regard to the state law fraudulent transfer claims that pop up repeatedly in bankruptcy cases. Many courts, including recently the Sixth and Ninth Circuits, have weighed in on *Stern*, making it clear to weary bankruptcy practitioners that the case's influence is alive and still evolving.

Andrea Davison is an attorney practicing bankruptcy law with Bean, Kinney & Korman, PC in Arlington. She can be reached at adavison@beankinney.com.

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