Viewpoint

One of a series of opinion columns by bankruptcy professionals

Stern v. Marshall And Jury Trials In Bankruptcy Cases

By William H. Stassen and Raymond M. Patella

Jury trials in bankruptcy cases are rare, with many bankruptcy judges passing their entire time on the bench never having seated a jury. This is because the district court must authorize bankruptcy judges in their district to conduct a jury trial, but many, if not all districts, require the parties' consent to the bankruptcy court conducting the trial. In the right case, however, a jury (as opposed to a bench) trial can significantly enhance chances for success. Could the U.S. Supreme Court's recent decision in Stern v. Marshall increase the number of jury trials in bankruptcy cases? The answer likely lies in how broadly or narrowly the *Stern v. Marshall* decision is applied in the coming years.

Historically, bankruptcy practitioners looked to three Supreme Court cases when evaluating whether a jury trial for a cause of action may be an option. In the first, *Katchen v. Landy*, 382 U.S. 323 (1966), the Supreme Court held that a bankruptcy court has "summary jurisdiction" in preference action brought by a bankruptcy trustee in response to a claim filed by the party alleged to have received the preference. In reaching its holding, the court reasoned that while a party may be entitled to a jury trial if no claim had been asserted in the bankruptcy case, when the issues arise out of the claims allowance process, that action was then triable in equity.

The second case is *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) in which the Supreme Court held that a party had a Seventh Amendment right to a jury trial in a fraudulent transfer case brought under Section 548 of the Bankruptcy Code when that party had not filed a proof of claim in the bankruptcy case.

The third case, *Langenkamp v. Culp* 498 U.S. 42 (1990), harmonized the prior two decisions, holding that a creditor's right to a jury trial for a preference action depended on whether the defendant filed a proof of claim in the bankruptcy case. If the party filed a proof of claim, the bankruptcy court's equitable jurisdiction applied and no jury trial would be afforded the party.

With this trio of cases many bankruptcy practitioners, particularly when facing preference and fraudulent transfer actions, looked to whether the party filed a proof of claim to determine if a right to a jury trial existed.

In *Stern v. Marshall*, the Supreme Court held that, although an Article I bankruptcy court was statutorily authorized by 28 U.S.C. § 157(b)(2)(C) to issue a final judgment on a counterclaim asserted by a debtor to a proof of claim (i.e., a "core" matter under the Bankruptcy Code), it lacked constitutional authority to do so, where the counterclaim at issue "did not stem from the bankruptcy itself or would necessarily be resolved in the claims allowance process." Rather, in those instances, final judgments on such state law claims must be decided by either the district court or state court.

Additionally in *Marshall*, the Supreme Court rejected the argument that because a proof of claim was filed, the bankruptcy court had the authority to enter a final judgment under the *Katchen* and *Langenkamp* cases. The court reasoned that the decision to file a proof of claim by a creditor does not change the character of a debtor's counterclaim. Because the creditor's and debtor's claims against the other were not related, and because the debtor's claims were not asserting a right of recovery under federal bankruptcy law, the court found that its own precedent was distinguishable.

The Supreme Court was careful to stress that its holding was a "narrow one" and limited to the specific question of the bankruptcy court's authority to issue a "final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim." Nevertheless, there is still much speculation in the bankruptcy bar and, presumably, on the bankruptcy bench, as to the reach of the Supreme Court's decision.

One aspect of the *Stern v. Marshall* opinion that has not garnered much attention to date is the specific aspect of the case that a party's constitutional right to have certain matters heard by an Article III judge effectively "trumped" any waiver or consent to bankruptcy court jurisdiction resulting from the creditor having filed a proof of claim. To take this a step further, one could argue that the constitutional right to a jury trial for actions for money judgments in excess of $20 as guaranteed by the Seventh Amendment should not be thwarted by the mere filing of a proof of claim. Whether a court agrees with that reasoning remains to be seen. But, given the potential advantages to a jury trial in some circumstances, parties will no doubt argue that a jury trial right exists even if a proof of claim was filed based upon the reasoning in the *Stern v. Marshall* decision.

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There are several reasons why a jury trial may be preferred. In many instances, a jury trial will be less expensive and may lead to a faster result. While bankruptcy judges are quite used to listening to hours of expert and fact testimony on intricate issues, most judges push the parties to more efficiently present evidence when the factfinder is a jury made up of citizens whose lives are interrupted by the trial.

Moreover, bench trials are often spread out over time according to the availability of the judge. Thus, if not completed in the day or so allotted, many bench trials are continued weeks or months later when the court has another opening on its calendar. A scheduled jury trial will ensure consecutive trial days from start to finish. This scheduling often leads to a quicker, less expensive result.

And, of course, a jury reaches its decision after the evidence is presented and it receives its charge. In contrast, even the most efficient judge will typically need weeks or months to make a decision, usually after requiring the parties to prepare post-trial proposed findings of fact and conclusions of law—a costly exercise.

In addition, most decisions regarding whether to try a case before a jury or the bench revolve around the emotional appeal of the particular case. Bankruptcy judges have heard so many trials that they are less likely to be moved emotionally by the facts of any given case. With a well-presented case, even the most complex cases can appeal to a juror's emotions. For example, a plaintiff asserting fraudulent transfer claims involving the hiding of assets may persuade an outraged jury more easily than a judge who has heard hundreds, if not thousands, of such cases.

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