

7-1993

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Recommended Citation

McGarrah, Merritt (1993) "*In re Grabill Corporation; Appeal of NCNB National Bank of North Carolina: Four To One Against Jury Trials in Bankruptcy Courts*," *Mercer Law Review*. Vol. 44 : No. 4 , Article 22.
Available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol44/iss4/22

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In re Grabill Corporation; Appeal of NCNB National Bank of North Carolina: Four To One Against Jury Trials in Bankruptcy Courts

I. INTRODUCTION

In *In re Grabill Corporation; Appeal of NCNB National Bank of North Carolina*,¹ the Seventh Circuit Court of Appeals joined the majority of the federal circuits in holding that bankruptcy judges do not have the express or implied authority to conduct jury trials.² When the Seventh Amendment grants the right to a jury trial, the district court must conduct the trial.³

II. STATEMENT OF THE CASE

Defendant, NCNB National Bank of North Carolina ("NCNB"), demanded a jury trial on preference and fraudulent transfer actions, that are "core" proceedings under 28 U.S.C. § 157(b)(2)(F).⁴ The parties agreed NCNB had a right to a jury trial under the Seventh Amendment. NCNB petitioned to withdraw the reference to the bankruptcy court on the ground that bankruptcy courts do not have the authority to conduct jury trials. The district court denied the petition based on the conclusion that bankruptcy courts have the authority to conduct jury trials.⁵

1. 967 F.2d 1152 (7th Cir. 1992).

2. *Id.* at 1158. See *In re United Missouri Bank*, 901 F.2d 1449 (8th Cir. 1990); *In re Kaiser Steel Corp.*, 911 F.2d 380 (10th Cir. 1990); *In re Baker & Getty Fin. Servs., Inc.*, 954 F.2d 1169 (6th Cir. 1992).

3. 967 F.2d at 1158.

4. Section 157(b) states the following:

(1) Bankruptcy judges may hear and determine all cases under Title 11 and all core proceedings arising under Title 11, or arising in a case under Title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core Proceedings include, but are not limited to — . . .

(F) proceedings to determine, avoid, or recover preferences.

28 U.S.C. § 157(b)(1) and (2) (1988).

5. *In re Grabill Corp.*, 133 B.R. 621, 626 (1991).

The dispute on appeal was whether the bankruptcy court has the statutory authority to conduct a jury trial on claims that involve proceedings normally in the bankruptcy court's jurisdiction and, if so, whether the authority is constitutional.⁶ The Seventh Circuit reversed the district court and remanded the case for a jury trial in the district court on the preference and fraudulent transfer actions that NCNB made a timely demand.⁷

III. THE SEVENTH CIRCUIT'S OPINION

In a two to one decision, the Seventh Circuit held that bankruptcy judges do not have the statutory and constitutional authority to conduct jury trials.⁸ Writing for the court, Judge Flaum discussed the legal history of the issue of jury trials in bankruptcy courts.⁹ The court held that the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("BAFJA") gives no express authority to bankruptcy judges to conduct jury trials.¹⁰ As a result, the court narrowed the issue to "whether such power may be implied" from the statutory language and legislative history.¹¹

A. Statutory Language

The court began its statutory interpretation with the BAFJA and the language of 28 U.S.C. § 1411 which preserves the right for a jury trial in personal injury and wrongful death actions.¹² The court also looked to 28 U.S.C § 157(b)(5) which requires that district courts hear personal injury cases.¹³ In analyzing these statutes, the court considered two possible but

6. 967 F.2d at 1152.

7. *Id.* at 1158.

8. *Id.* (Judge Flaum, joined by Judge Coffey, wrote for the court with Judge Posner dissenting.).

9. *Id.* at 1153. See, e.g., Elizabeth Gibson, *Jury Trials and Court Proceedings: The Bankruptcy Judge's Uncertain Authority*, 65 AM. BANKR. L.J. 143 (Winter 1991); Anthony Michael Sabino, *Jury Trials, Bankruptcy Judges and Article III: A Constitutional Crisis of the Bankruptcy Court*, 21 SETON HALL L. REV. 258 (1991); Symposium, *Jury Trials in Bankruptcy Courts*, 65 AM. BANKR. L.J. 1 (Dedication Issue 1991).

10. 967 F.2d at 1153. See Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (codified in scattered sections in titles 5, 11, and 28).

11. 967 F.2d at 1153.

12. *Id.* Section 1411 provides the following:

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

28 U.S.C. § 1411 (1988).

13. Section 157(b)(5) provides the following:

contradictory interpretations.¹⁴ The first possible interpretation would hold that in bankruptcy proceedings only personal injury cases have the right to a jury trial, and these trials must be conducted in the district court. The second interpretation would hold that these statutes supported jury trials in bankruptcy but only personal injury cases must be conducted in the district court; other cases involving jury trials remain in bankruptcy court. In *In re Hallahan*,¹⁵ the Seventh Circuit stated that it preferred "the view that the statute intends to grant jury trials in bankruptcy court only in personal injury and wrongful death actions."¹⁶ The Seventh Circuit maintained its narrow interpretation of jury trial rights under BAFJA sections 1411 and 157.¹⁷

The court felt that section 157(b)(1) was too ambiguous to provide a solution to the issue.¹⁸ The provision provides that "bankruptcy judges may hear and determine all cases under Title 11 and all core proceedings arising under Title 11."¹⁹ This provision is subject to two possible interpretations. The first, the plain language interpretation followed by the Tenth Circuit, is that bankruptcy judges have the power to hear and determine cases.²⁰ The second interpretation is that section 157(b)(1) grants a broad power over "all core proceedings," with no distinction between jury and nonjury trials.²¹

B. Legislative History

The legislative history did not resolve the ambiguities of the statutes. The amendments in BAFJA did not specifically endorse the prohibition on the authority of bankruptcy judges to conduct jury trials of the Emer-

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

28 U.S.C. § 157(b)(5) (1988).

14. 967 F.2d at 1153.

15. 936 F.2d 1496 (7th Cir. 1991).

16. *Id.* at 1507.

17. 967 F.2d at 1153. The court noted the "realist view" that Congress could have inserted the right to a jury trial in personal injury cases as a compromise with personal injury lawyers. *Id.* at 1158 n.3 (citing *In re Clark*, 75 B.R. 337, 339-40 (Bankr. N.D. Ala. 1987)).

18. *Id.* at 1154.

19. 28 U.S.C. § 157(b)(1) (1988).

20. 967 F.2d at 1154 (citing *In re Kaiser Steel Corp.*, 911 F.2d 380 (10th Cir. 1990)). The Court of Appeals for the Tenth Circuit limited section 157(b)(1) to a literal reading. The court stated that if jury trials were present the bankruptcy judge's express power to "determine" cases would be limited. 911 F.2d at 380, 391.

21. 967 F.2d at 1154 (citing Gibson, *Uncertain Authority*, *supra* note 9, at 157 n.113).

gency Rule.²² The court noted the view of the Eighth Circuit, which reasoned that the 1984 Act endorsed the Emergency Rule and implied that Congress intended the prohibition.²³ The opposing side argued that Congress would have enacted the prohibition if it intended to limit the authority of the bankruptcy judges.²⁴ Because Congress had expressly provided for jury trials in other circumstances, the court decided that Congress would have expressly provided for jury trials in bankruptcy courts had it intended.²⁵ The court stated that it "would have been easy" for Congress to establish a provision that provides for jury trials if it had desired.²⁶

In reading section 157, the court did not find a conflict with its conclusion that bankruptcy courts do not have the authority to conduct jury trials.²⁷ The court interpreted section 157 to provide that bankruptcy judges may "hear" the cases of non-core proceedings and "hear and determine" core proceedings.²⁸ Actions involving preference and fraudulent transfers are considered core proceedings. The statute does not address the issue of jury trials. The court compared the statutory framework to the Magistrates Act.²⁹ Although the Magistrates Act is similar, whenever a magistrate conducts a jury trial the statute expressly provides for review by the court of appeals.³⁰ BAFJA does not provide for appeals directly to the court of appeals.³¹ Section 157(d) provides that those bankruptcy cases which require a jury trial are to be withdrawn to the district court.³²

Next, the court addressed the trustee's argument that if a judge needs express authorization to conduct a jury trial, then even district courts

22. *Id.* After the Supreme Court found 28 U.S.C. § 241(a) to be unconstitutional in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), the Emergency Rule was adopted as a "temporary measure to provide for the orderly administration of bankruptcy cases and proceedings" 1 COLLIER ON BANKRUPTCY 3.01(1) (b) (vi) at 3-15 (1993). See Emergency Rule reprinted in 1 COLLIER ON BANKRUPTCY 3.01(1) (b) (vi) at 3-15 to -19 (1993). The powers of the bankruptcy court were limited by the Emergency Rule. The Rule provided a prohibition on jury trials in bankruptcy proceedings and required matters to be held before the district judge. *Id.* at 3-17.

23. 967 F.2d at 1154 (citing *In re United Missouri Bank of Kansas City*, 902 F.2d 1449 (8th Cir. 1990)).

24. *Id.* (citing Gibson, *Uncertain Authority*, *supra* note 9, at 158).

25. *Id.* at 1155. See 28 U.S.C. §§ 636(a)(3), (c)(1) (1988) (magistrate judges provided with express authority to conduct jury trials).

26. 967 F.2d at 1155.

27. *Id.* at 1156.

28. *Id.*

29. *Id.* See Magistrates Act, 28 U.S.C. § 636(b)(1)(A) and (B) (1988).

30. 967 F.2d at 1156. See 28 U.S.C. § 636(c)(3) (1988).

31. 967 F.2d at 1156.

32. 28 U.S.C. § 157(d) (1988).

could not conduct jury trials.³³ The court distinguished the bankruptcy courts from district courts noting that bankruptcy courts derive authority from Congress, while district courts have authority in Article III of the Constitution.³⁴ Although acknowledging that other non-Article III tribunals that had the authority to conduct jury trials were either given the express authority or were unique courts in the federal scheme,³⁵ the court concluded that bankruptcy judges are limited to the authority conferred by statute.³⁶

The court based its conclusion on the canon of construction that requires a court to interpret a federal statute to avoid raising constitutional issues if a reasonable alternative exists that does not raise such issues.³⁷ The Seventh Circuit followed the Eighth Circuit and avoided the constitutional issues surrounding the bankruptcy judges' authority by finding no statutory authority and not addressing the constitutional problems.³⁸

The court addressed the policy arguments of efficiency and strategy raised by appellee.³⁹ Although efficiency was a basis for the modern bankruptcy courts, the court felt that withdrawing those matters requiring jury trials would not affect the efficiency of the bankruptcy court system.⁴⁰ The court feared that the parties would use jury trials as a strategic tool in both the district court and bankruptcy court to avoid certain judges.⁴¹

In support of not allowing jury trials in bankruptcy courts, the court noted that bankruptcy courts are not equipped to accommodate jury trials.⁴² The court stated that "[t]he rapid pace of bankruptcy cases and proceedings do not mesh with jury procedures."⁴³ Although the court ad-

33. 967 F.2d at 1156. See Appellee's Brief at 8 and Elizabeth Gibson, *Jury Trials in Bankruptcy: Obeying the Commands of Article III and the Seventh Amendment*, 72 MINN. L. REV. 967, 1028 n.289 (1988).

34. 967 F.2d at 1156.

35. *Id.* at 1156-57. Express authority is given to magistrate judges. See 28 U.S.C. § 636(c) (1988). The courts of the District of Columbia are established with characteristics of Article III courts and are considered "a wholly separate court system designed primarily to concern itself with local law and to serve as a local court system for a large metropolitan area." *Palmore v. United States*, 411 U.S. 389, 408 (1973).

36. 967 F.2d at 1156.

37. *Id.* at 1157.

38. *Id.* (citing *In re United Missouri Bank of Kansas City*, 901 F.2d 1449 (8th Cir. 1990)).

39. *Id.*

40. *Id.*

41. *Id.* (citing Douglas Baird, *Jury Trials After Granfinanciera*, 65 AM. BANKR. L.J. 11 (1991)).

42. *Id.* at 1158.

43. *Id.*

mitted that it was uncertain exactly what Congress intended, the purpose of bankruptcy courts required the court to hold that BAFJA does not authorize judges to conduct jury trials.⁴⁴

C. *The Dissent*

In dissent, Judge Posner argued that what the court was dealing with was a "statutory gap."⁴⁵ The judge noted that Congress enlarged the jurisdiction of bankruptcy courts to include proceedings that were later found to be actions at law by the Supreme Court.⁴⁶ Judge Posner pointed out that the Supreme Court failed to decide whether bankruptcy courts had the authority to conduct jury trials and Congress never considered the issue.⁴⁷ Agreeing with the majority that the statutes and their legislative history provide no aid to interpreting the statute, Judge Posner felt that the decision should be based on "practical considerations."⁴⁸

Judge Posner considered the advantage of having jury trials in bankruptcy courts as opposed to withdrawing the case to the district court.⁴⁹ He felt that by keeping the entire action in one court, time and resources would be saved and any "extraneous considerations" about whether to demand a jury trial would be prevented.⁵⁰ Judge Posner criticized the majority's view that the demand for jury trial may be used to avoid a certain judge.⁵¹

Judge Posner supported his view that bankruptcy judges should conduct jury trials by stating that despite their lack of life tenure, which federal district judges have, they were competent.⁵² He pointed out that the biggest differences between jury trials and non-jury trials were jury voir dire and jury instructions.⁵³ He felt that bankruptcy judges could handle the additional responsibilities.⁵⁴ Based on his "considerations" and without concern for the constitutional problems, Judge Posner concluded that the court is left to address the issue and that bankruptcy judges should have the authority to conduct the jury trials.⁵⁵

44. *Id.*

45. 967 F.2d at 1159 (Posner, J., dissenting).

46. *Id.* (citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989)). See *infra* text accompanying notes 62-65.

47. 967 F.2d at 1159.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 1160.

53. *Id.*

54. *Id.*

55. *Id.*

IV. ANALYSIS

A. *Split Among the Circuits: Background*

In 1989, the Supreme Court held in *Granfinanciera v. Nordberg*⁵⁶ that the Seventh Amendment of the United States Constitution entitles a person to a jury trial when sued by the trustee in bankruptcy to recover an allegedly fraudulent monetary transfer.⁵⁷ *Granfinanciera* was the first case in which the court recognized a Seventh Amendment right to a jury trial in bankruptcy court proceedings.⁵⁸ However, the Supreme Court failed to decide whether bankruptcy courts had the authority to conduct jury trials.⁵⁹

Since *Granfinanciera*, district courts have had to decide whether the bankruptcy court or the district court have the authority to conduct a jury trial. The first court of appeals to address the issue, the Second Circuit, held that bankruptcy judges have that authority.⁶⁰ In reading *Granfinanciera*, the Second Circuit held that the Supreme Court did not "foreclose the possibility of jury trials in the bankruptcy court."⁶¹ The Second Circuit found that bankruptcy judges have both the statutory and constitutional authority to conduct jury trials.⁶² The court implied statutory authority from sections 151 and 157(b) of BAFJA.⁶³ The Second Circuit did not give any weight to the lack of express authority and dismissed the constitutional problems with allowing bankruptcy judges to conduct jury trials as not offending the Seventh Amendment or Article III of the Constitution.⁶⁴

Prior to the Seventh Circuit's decision in *In re Grabill Corp.*, the Sixth, Eighth, and Tenth Circuits held that bankruptcy courts do not have the authority to conduct jury trials giving rise to a significant split in the law. The Eighth Circuit Court of Appeals finding that no statutory authority existed, and reluctant to grant authority absent a statutory mandate, held that bankruptcy judges lack the express or implied authority to conduct

56. 492 U.S. 33 (1989).

57. *Id.* at 36.

58. *Id.* at 81.

59. *Id.* at 49-50.

60. *In re Ben Cooper, Inc.*, 896 F.2d 1394, 1456 (2d Cir.), *cert. granted*, 497 U.S. 1023 (1990), *vacated and remanded*, 498 U.S. 464 (1990), *reinstated*, 924 F.2d 36 (2d Cir. 1991), *cert. denied*, 111 S. Ct. 2041 (1991).

61. 967 F.2d at 1401.

62. *Id.* at 1402-03.

63. *Id.*

64. *Id.*

jury trials in a preference action.⁶⁵ Because the court found no statutory authority, the court did not discuss the constitutional issues.⁶⁶

Faced with the split among the circuits, the Tenth Circuit Court of Appeals adopted the Eighth Circuit's reasoning and found no congressional intent to provide bankruptcy judges with the authority.⁶⁷ The Tenth Circuit focused on the statutory reduction of the authority of bankruptcy judges in 1984.⁶⁸ Contrary to the reasoning of the Second Circuit, the Tenth Circuit held that Congress did not consider the authority of bankruptcy judges over jury trials.⁶⁹ The court noted the desirability of granting bankruptcy judges the authority to conduct jury trials but could not "find that power where Congress has not granted it."⁷⁰

The Sixth Circuit followed the Eighth and Tenth Circuits' decisions.⁷¹ The brief opinion of the Sixth Circuit cited three reasons for holding that bankruptcy judges lack the authority to conduct jury trials. First, no statutory language authorizes jury trials in bankruptcy courts.⁷² Second, the court found no Bankruptcy Rule that provided for jury trials.⁷³ Third, the legislative history reveals no congressional intent to provide bankruptcy judges with the authority.⁷⁴

B. *The Opinion*

The court based its decision of whether bankruptcy judges have the authority to conduct jury trials on a "choice between uncertainties."⁷⁵ Of the five courts of appeals that have addressed the issue, each searched for some sign of congressional intent to provide judges with that authority. Because no express authorization exists, the statutory text and legislative history must provide implied authorization.⁷⁶ Due to the lack of significant evidence supporting implied authority, it is not surprising that the Seventh Circuit joined the majority of the federal courts and held that bankruptcy judges lack the authority to conduct jury trials.⁷⁷

The Seventh Circuit maintains a conservative outlook in evaluating the various statutes and legislative actions. As the dissent stated, the major-

65. *In re United Missouri Bank*, 901 F.2d 1449, 1456 (8th Cir. 1990).

66. 967 F.2d at 1456.

67. *In re Kaiser Steel Corp.*, 911 F.2d 380, 389 (10th Cir. 1990).

68. *Id.* at 390. See 1 COLLIER ON BANKRUPTCY 3.01(7) (b), at 3-107 to 3-114 (1993).

69. 911 F.2d at 390-91.

70. *Id.* at 392.

71. *In re Baker & Getty Fin. Servs., Inc.*, 954 F.2d 1169, 1172 (6th Cir. 1992).

72. *Id.* at 1173.

73. *Id.*

74. *Id.*

75. 967 F.2d at 1158.

76. See *supra* text accompanying notes 11-37.

77. 967 F.2d at 1158.

ity opinion presented "the parries as well as the thrusts" of the issue.⁷⁸ Concerned with overreaching, the Seventh Circuit would not provide authority unless congressional intention was clear.⁷⁹

Of course, the court would have preferred explicit authority from Congress. Based on the court's reasoning, Congress easily could have provided the express authority if it so intended.⁸⁰ The problem arises when one realizes that Congress probably never considered the need for jury trials when it passed BAFJA in 1984.⁸¹ Prior to *Granfinanciera*, the Seventh Amendment's right to a jury trial did not include bankruptcy proceedings.⁸² Congress did not have to worry about jury trials because they were not an issue.

The majority searched for some indication that Congress intended to provide jury trials in bankruptcy courts. The court correctly refused to imply any authority when the legislative history was so scarce.⁸³ Due to the developments that occurred after the passage of BAFJA in 1984, the court had difficulty ascertaining what Congress would have intended had it considered the issue. However, looking to similar statutes, the court was able to reach a reasonable conclusion.

Gibson criticizes the court's reliance on the canon of construction that avoids constitutional issues because it postpones the issues for another day.⁸⁴ By finding that bankruptcy judges lack the statutory authority to conduct jury trials, the courts avoid addressing the constitutionality of that practice.⁸⁵ In the aftermath of *Granfinanciera*, Gibson feels that "the authorization of bankruptcy judges to hear and determine and enter final judgement in core proceedings . . . raises constitutional concerns."⁸⁶

V. CONCLUSION

In conclusion, the current state of the law on the issue of jury trials in bankruptcy can be summarized. First, a party is entitled to a jury trial when the requirements of the Seventh Amendment are met: mainly, if the jury right existed at common law in England in the eighteenth century. Second, bankruptcy judges are prohibited from hearing personal injury and wrongful death cases, which only a district court judge may hear under 28 U.S.C. § 157. Third, there is a split of authority with respect to

78. *Id.* at 1159.

79. *Id.* at 1158.

80. *Id.* at 1155-56.

81. 911 F.2d at 391.

82. 492 U.S. at 81.

83. 967 F.2d at 1154.

84. Gibson, *Uncertain Authority*, *supra* note 9, at 162.

85. *Id.*

86. *Id.*

whether bankruptcy judges have the statutory authority to conduct a jury trial on core proceedings and, if so, whether the practice is constitutional.

For bankruptcy judges to have the authority to conduct jury trials, both the statutory and constitutional authority must exist. The majority of the circuits that have addressed the issue only discussed the absence of statutory authority and avoided the constitutional questions. Although the Supreme Court twice deferred the issue, it must ultimately resolve it. The circuits are divided on whether bankruptcy judges have the statutory and constitutional authority to conduct jury trials.

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