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JUDGE: M. A. Mahoney

PARTIES: Tillery Mechanical Contractors, Inc., Jimenez, Inc.

CHAPTER:

ATTORNEYS: J. C. McManus, A. R. Maples, Jr.

DATE: 11/23/99 (amending 11/4/99 order)

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

TILLERY MECHANICAL CONTRACTORS, INC.

Case No. 97-10303-MAM-7

Debtor.

JIMINEZ, INC.

Plaintiff,

v.

Adv. No. 97-1183

Adv. No. 97-1112

TILLERY MECHANICAL CONTRACTORS, INC.

Defendant.

TILLERY MECHANICAL CONTRACTORS, INC.

Plaintiff,

v.

Adv. No. 97-1312

Adv. No. 98-1101

JIMINEZ, INC., et al.

Defendant.

AMENDED
ORDER DETERMINING ORDER AND JUDGMENT
OF SEPTEMBER 28, 1999 NUNC PRO TUNC IS FINAL JUDGMENT
PURSUANT TO FED. R. BANKR. P. 7054(b)

John C. McManus, Atlanta, Georgia, Attorney for Plaintiff

A. Richard Maples, Jr., Mobile, Alabama, Attorney for Defendant

This order is amended solely to reflect all the affected adversary proceedings in the heading.

This case is before the Court on the motion of the trustee for entry of an order expressly determining that the judgment entered September 28, 1999, is a final judgment pursuant to Fed.

R. Bankr. P. 7054(b). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the order of reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The parties agreed that the Court should enter such an order, but the Court concludes, upon a review of the case law, that a short opinion is needed supporting the Rule 54(b) certification.

LAW

Fed. R. Bankr. P. 9054(b) provides:

When more than one claim for relief is presented in an action . . . or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

The trustee seeks a final judgment on all of the matters the Court ruled upon in its September 28, 1999 order. The remaining issues are the extent and priority of the liens of AmSouth Bank of Alabama and the United States (Internal Revenue Service) against the amounts awarded to the trustee.

A Fed. R. Bankr. P. 7054(b) certification requires that the Court “support its conclusion by clearly and cogently expressing its reasoning and the factual and legal determinations supporting that reasoning.” *Brandt v. Bassett (In re Southeast Banking Corporation)*, 69 F.3d 1539, 1546 (11th Cir. 1995). Under the rationale of the *Southeast Banking Corporation* case, a judgment may be certified only if “it possesses the requisite degree of finality. The judgment must completely dispose of at least one substantive claim.” *Southeast* at 69 F.3d 1547. For a final judgment to be proper, any claims which remain untried cannot be alternative forms of relief as to the same recovery sought.

The judgment of September 28, 1997 completely adjudicated the claims between the plaintiff and named defendants. The remaining claims are completely separate. The IRS and AmSouth claims concern the disposition of the funds awarded to the trustee on the September 28, 1999 order.

The other part of the Rule 7054(b) test is whether there is “no just reason for delay.” This test is also met. It serves no purpose to adjudicate the disposition of the funds awarded to the trustee if it is determined on appeal that he is owed nothing. The parties, including the IRS and AmSouth, agree that this part of the suits should be certified and the defendants’ appeals be prosecuted now.

THEREFORE, IT IS ORDERED:

1. The motion of the trustee for a certification pursuant to Fed. R. Bankr. P. 7054(b) is GRANTED.
2. The Court directs that the order and judgment dated September 28, 1999 is a final judgment for all purposes.

Dated: November 23, 1999

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE