

May 27, 2015

RESTRUCTURING AND FINANCE DEVELOPMENTSSupreme Court Permits Bankruptcy Courts to Issue Final Judgments with Parties' Consent

Continuing a line of recent decisions addressing the power of bankruptcy judges to resolve lawsuits between bankruptcy estates and their creditors, the Supreme Court held yesterday that litigants can consent to bankruptcy court adjudication of their claims and suggested that parties may forfeit untimely objections to a bankruptcy court's lack of authority. [*Wellness Int'l Network, Ltd. v. Sharif*, No. 13-935 \(May 26, 2015\)](#). The *Wellness* decision follows up on the Supreme Court's landmark ruling in *Stern v. Marshall*, which held that bankruptcy judges have limited authority under Article III of the Constitution to determine claims asserted by an estate against creditors (see [memo](#) of June 27, 2011), and its decision in *Executive Benefits Insurance Agency v. Arkinson*, which clarified the approach to be used by district courts in reviewing decisions issued by bankruptcy judges without constitutional authority (see [memo](#) of June 10, 2014).

The *Wellness* decision arose out of a claim by a creditor, Wellness International, that the debtor, Sharif, concealed assets within a trust. Wellness obtained a final judgment in bankruptcy court that the trust was Sharif's alter ego and that its assets were part of Sharif's bankruptcy estate. Sharif appealed to the district court, but failed in his opening brief to object to the bankruptcy judge's authority to enter final judgment under *Stern* (which had come down six weeks earlier), and the district court denied Sharif permission to raise the objection later. After the district court affirmed the bankruptcy court's judgment, Sharif appealed to the Seventh Circuit. That court held that the bankruptcy judge lacked authority to adjudicate Wellness's claim under *Stern*, and that although Sharif's *Stern* objection had been untimely, a bankruptcy litigant's Article III rights are not subject to waiver.

The majority of a divided Supreme Court disagreed. Addressing a significant issue that had split lower courts in the wake of *Stern* — and drawing an analogy between bankruptcy judges and federal magistrate judges — the Court held that “allowing bankruptcy litigants to waive the right to Article III adjudication” was permissible. The Court further held that such a waiver need not be “express” and could be effectuated through “actions rather than words.” The Court stated, however, that a waiver of Article III rights must be made “knowingly and voluntarily” and remanded the case for a determination whether Sharif validly gave consent.

Although *Wellness* rejected what it characterized as an “expansive reading” of *Stern*, the decision adheres to *Stern*'s core teaching that bankruptcy courts generally lack power to enter final judgments on state law claims by an estate against a creditor. Nonetheless, *Wellness* makes clear that litigants can consent to bankruptcy court authority over such claims, and that litigants wishing to preserve their right to an Article III forum must be vigilant. While the Court recognized that “it is good practice for courts to seek express statements of consent or nonconsent,” *Wellness* leaves open the possibility that the actions of an unwary party will be treated as an implied waiver of the right to an Article III tribunal.

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