

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re)	
)	Chapter 11 (Jointly Administered)
PLAINWELL, INC., et al.,)	
)	Case No. 00-4350 (JWV)
Debtors.)	
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UNITED STATES OF AMERICA,)	
)	
Appellant,)	
)	Civil Action No. 04-17-KAJ
v.)	
)	
PLAINWELL, INC., et al.)	
)	
Appellees.)	

MEMORANDUM ORDER

Presently before me is an appeal by the United States from the Bankruptcy Court’s Order (the “Confirmation Order”) Confirming Plainwell, Inc., et. al.’s, (collectively the “Debtor”) Amended Joint Chapter 11 Plan of Liquidation (the “Plan”). Specifically, the United States objects to the portion of that Order that releases Debtor’s third-party officers and directors (the “Third-Parties”) from potential tax liability for 2000, 2001, and 2002. For the reasons that follow, the United States’ appeal is granted.

I. Standard of Review

Jurisdiction exists over appeals from the Bankruptcy Court, pursuant to 28 U.S.C. § 158(a). On appeal, this court applies a clearly erroneous standard to the Bankruptcy Court’s findings of fact and a plenary standard to its legal conclusions. See *Am. Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 80 (3d Cir. 1999).

When reviewing mixed questions of law and fact, this court will accept the Bankruptcy Court's finding of "historical or narrative facts unless clearly erroneous, but [will] exercise plenary review of the trial court's choice and interpretation of legal precepts and its application of those precepts to the historical facts." *Mellon Bank, N.A. v. Metro Communications, Inc.*, 945 F.2d 635, 642 (3d Cir. 1991) (internal quotes omitted).

II. Statement of the Facts

On November 21, 2000, Debtor filed bankruptcy petitions seeking relief under Chapter 11 of the Bankruptcy Code. (Docket Item ["D.I."] 16, Des. 21 at 1.) On October 2, 2003, Debtor filed its Amended Joint Chapter 11 Plan of Liquidation. (D.I. 16, Des. 34.) The United States timely objected, *inter alia*, to the third party non-debtor exculpation, limitation of liability, injunction, and release provisions in the Plan. (D.I. 16, Des. 21 at ¶ 8.) On November 21, 2003, the Bankruptcy Court approved the Confirmation Order over the United States' objections. (D.I. 16, Des. 34.)

The Confirmation Order provides that, upon the filing of the proper employment tax returns by the Third-Parties, the Internal Revenue Service (the "IRS") is permanently enjoined from collecting taxes for the years 2000, 2001, and 2002. (D.I. 16, Des. 34 at ¶ 6.) As of the time of filing this appeal, the IRS had not filed a claim to collect employment taxes against any of the Third-Parties. (D.I. 23 at 7.)

III. Discussion

The facts of this case are not in dispute; however, the parties disagree as to whether the Bankruptcy Court has subject matter jurisdiction to enter an injunction preventing the IRS from collecting taxes from a third-party non-debtor.

The Supreme Court has repeatedly held that "[a] litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance." See, e.g., *Grupo Dataflux v. Atlas Global Group, L.P.*, 124 S. Ct. 1920, 1927 (2004). As I am resting my ruling on the issue of subject matter jurisdiction, the timeliness of the United States' raising of this issue is irrelevant.

The Internal Revenue Code states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C.S. § 7421 (2004) ("Injunction Act"). The United States Court of Appeals for the Third Circuit has stated that "[h]ad Congress wished its 1966 amendments to the Bankruptcy Act to authorize bankruptcy courts to issue injunctions against the collection of tax, we believe this intention would have been reflected in the amendments to 26 U.S.C. § 7421(a)"¹ *In re Becker's Motor Transp.*, 632 F.2d 242, 246 (3d Cir. 1980). More recent cases in other circuits have held that Congress did not intend to supercede the Injunction Act when it passed the new Bankruptcy Code. See, e.g., *LaSalle Rolling*

¹Although *In re Becker's* refers to the Bankruptcy Act, which has since been replaced by the Bankruptcy Code, the Injunction Act still does not contain an exception for bankruptcy cases, therefore, the holding remains sound. 632 F.2d 242.

Mills v. United States Dep't of Treasury (In re La Salle Rolling Mills), 832 F.2d 390, 394 (7th Cir. 1987); *Laughlin v. United States IRS*, 912 F.2d 197 (8th Cir., 1990).

Under that case law, it appears that the Bankruptcy Court improperly enjoined the IRS from collecting taxes from the Third-Parties. 632 F.2d 242. The Debtor, however, notes that the “Supreme Court has recognized certain exceptions to the Anti-Injunction Act.” (D.I. 23 at 13.) The Supreme Court has held that if the collection of the tax would cause “irreparable harm”, and the government under no circumstances could prevail, a court may enter an injunction against the IRS. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962). In that case, the Supreme Court went on to state that “[o]nly if it is then apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for an injunction be maintained.” *Id.*

In the instant case, Debtor states that the “IRS has never asserted ... [a] tax claim against the Debtors and/or their officers” (D.I. 23 at 14.) As the Bankruptcy Court did not have any information about the IRS’s claim, taking the “most liberal view of the law and the facts” it cannot be shown that the United States cannot establish its claim.

Consequently, the Bankruptcy Court did not have subject matter jurisdiction to enter an injunction against the IRS.

IV. Conclusion

Therefore, it is hereby ORDERED that the November 21, 2003 Order of the Bankruptcy Court (D.I. 1, Attch. 1) is reversed to the extent that it enjoins the IRS from collecting taxes from the Third-Parties, and this case is remanded to the Bankruptcy Court for proceedings consistent with this Order.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

DATE: October 7, 2004
Wilmington, Delaware