

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
 ) In Proceedings  
 ) Under Chapter 7  
GOURMET EVERYDAY, INC. )  
and FULCO, INC., ) No. BK 86-50043  
 )  
Debtors. )  
  
STEVEN N. MOTTAZ, Trustee for )  
the estates Fulco, Inc. and )  
Gourmet Everyday, )  
 )  
Plaintiff) )  
 )  
v. ) ADVERSARY NO.  
 ) 86-0244  
OPEN KITCHENS, INC., )  
 )  
Defendant) )  
  
MADISON COUNTY COMMUNITY )  
DEVELOPMENT, Madison County, )  
 )  
Intervenor-Plaintiff, )  
 )  
v. )  
 )  
OPEN KITCHENS, INC., )  
and STEVEN N. MOTTAZ, )  
Trustee for the estates of )  
Fulco, Inc. and Gourmet )  
Everyday, Inc., )  
 )  
Defendants. )

O R D E R

This matter is before the Court on Open Kitchens' motion for summary judgment and on its demand for a jury trial. Summary judgment is appropriate only where the record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56. The

party moving for summary judgment has the burden of establishing the lack of a genuine issue of material fact. Korf v. Ball State University, 726 F.2d 1222, 1226 (7th Cir. 1984). The Court must view the evidence, and the reasonable inferences to be drawn therefrom, in the light most favorable to the party opposing summary judgment. Id.

In the present case, the Court finds that further factual development is needed to resolve the issues raised in this case. This resolution may depend, in part, on the credibility of the witnesses, and since credibility determinations cannot be made on summary judgment motions, a hearing on debtors' complaint appears necessary. Therefore, the Court will deny the motion for summary judgment.

The remaining question currently before the Court is whether Open Kitchens is entitled to have the adversary complaint heard by a jury. The Court notes that Open Kitchens has filed a proof of claim for sums allegedly owed it under a contract which is the subject of the adversary complaint. In effect, the complaint is a counterclaim to Open Kitchens' proof of claim.

By filing this proof of claim, Open Kitchens has submitted itself to this Court's jurisdiction and the trial of this action will determine both Open Kitchens' claim and the Trustee's counterclaim. Therefore, this action is a "core proceeding" under 28 U.S.C. §157(b)(2)(C). In re Bedford Computer Corp., 61 B.R. 594, 595 (Bankr. D. N.H.) aff'd 63 B.R. 79 (D. N.H. 1986).

Several courts have held that since bankruptcy courts are

inherently courts of equity there is no right to a jury trial in core proceedings. See, In re I.A. Durbin, 62 B.R. 139, 145 (S.D. Fla. 1986); In re Mansker, 60 B.R. 803, 806 (Bankr. D. Mass. 1986); Matter of Baldwin United Corp., 48 B.R. 49, 56 (Bankr. S.D. Ohio 1985). This position is based on the Supreme Court's decision in Katchen v. Landy, 382 U.S. 323 (1966) where the court held that matters which fall within the traditional summary jurisdiction of the bankruptcy court carry no right to a trial by jury.

In Katchen, which was decided under the old Bankruptcy Act, the trustee objected to a creditor's claim, sought to have the money paid to the creditor declared a voidable preference and sought a judgment for the amount of the preference. The court stated that although the creditor "might be entitled to a jury trial on the issue of preference if he presented no claim in the bankruptcy proceeding, and awaited a federal plenary action by the trustee, when the same issue arises as part of the process of allowance and disallowance of claims, it is triable in equity." Id. at 336 (citations omitted). The decision in Katchen remains good law as illustrated by its citation as precedent by the Supreme Court in Commodities Futures Trading Commission v. Schor, \_\_\_\_ U.S. \_\_\_\_, 106 S.Ct. 3245, 3258 (1986). See also, Matter of Honeycomb, Inc., 72 B.R. 371, 377 (Bankr. S.D. N.Y. 1987); In re Adams Browning & Bates, Ltd., 70 B.R. 490, 495 (Bankr. E.D. N.Y. 1987).

In the present case, Open Kitchens' position is similar to that of the creditor in Katchen. Open Kitchens filed its claim to seek equitable distribution of estate assets. Thus, the "legal" nature of

the adversary complaint has been converted to one in equity by virtue of Open Kitchens' equitable claim on debtor's estate. Matter of Honeycomb, supra at 378.

Open Kitchens cites Bankruptcy Rule 9015, which dealt with the conduct of jury trials by bankruptcy courts, in support of its jury trial demand. Several bankruptcy courts have cited the promulgation of Rule 9015 to justify their decisions that they could hold jury trials. See, In re O.P.M. Leasing Services, Inc., 48 B.R. 824, 827 n. 2 (S.D. N.Y. 1985); In re River Transportation Co., 35 B.R. 556 (Bankr. M.D. Tenn. 1983); In re Martin Baker Well Drilling, Inc., 36 B.R. 154 (Bankr. Me. 1984). It was this citation of a procedural rule to justify the grant of a substantive right which resulted in the recent abrogation of Rule 9015.<sup>1</sup>

---

<sup>1</sup>On March 30, 1987, the Supreme Court adopted amendments to the Bankruptcy Rules, one of which abrogated Rule 9015 effective August 1, 1987. The committee note accompanying the abrogated rule states as follows:

Former section 1480 of title 28 preserved a right to trial by jury in any case or proceeding under title 11 in which jury trial was provided by statute. Rule 9015 provided the procedure for jury trials in bankruptcy courts. Section 1480 was repealed. Section 1411 added by the 1984 amendments affords a jury trial only for personal injury or wrongful death claims, which 28 U.S.C. §157(b)(5) requires be tried in the district court. Nevertheless, Rule 9015 has been cited as conferring a right to jury trial in other matters before bankruptcy judges. In light of the clear mandate of 28 U.S.C. §2075 that the "rules shall not abridge, enlarge, or modify any substantive right," Rule 9015 is abrogated. In the event the courts of appeals or the Supreme Court define a right to jury trial in any bankruptcy matters, a local rule in

The Court finds that, by filing a proof of claim, Open Kitchens has subjected itself to the Court's equitable jurisdiction over the resolution of the disputed claim between the Trustee and itself and, therefore, Open Kitchens does not have a right to a jury trial Of this matter.

IT IS ORDERED that the motion for summary judgment filed by Open Kitchens, Inc. is DENIED.

IT IS FURTHER ORDERED the demand for jury trial filed by Open Kitchens, Inc. is DENIED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: December 4, 1987

---

substantially the form of Rule 9015 can be adopted pending amendment of these rules.