

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

IN RE:	)	In Proceedings
	)	Under Chapter 7
JAMES R. MORRISON, III and	)	
PATRICIA A. MORRISON,	)	No. BK 87-50558
	)	
Debtor(s),	)	
	)	
MELVIN BALSTERS and	)	
HAROLD BALSTERS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ADVERSARY NO.
	)	89-0162
JAMES R. MORRISON, III,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

James R. Morrison, III and Patricia A. Morrison (debtors) filed a joint petition under chapter 7 of the Bankruptcy Code on October 27, 1987. The chapter 7 petition listed Mr. Morrison's occupation as an attorney/business consultant.

Melvin Balsters and Harold Balsters (Balsters) each filed a proof of claim in the chapter 7 proceeding. Both proofs of claim alleged debtor had been negligent in the performance of legal services and due to that negligence was liable to each claimant for one million dollars. Subsequently, on July 24, 1989, the Balsters filed an adversary complaint which was based on the legal malpractice claim. The adversary complaint requested money damages and demanded a jury trial. The issue this Court must resolve is whether the Balsters are entitled to a jury trial.

The United States Supreme Court recently decided Granfinanciera

v. Nordberg, \_\_\_\_\_ U.S. \_\_\_\_\_ 57 U.S.L.W. 4898 (June 23, 1989). In Granfinanciera the Supreme Court held that the Seventh Amendment entitles a person who has not submitted a claim against the bankruptcy estate to a trial by jury, notwithstanding Congress' designation of the action as a "core proceeding." 57 U.S.L.W. at 4899.

Granfinanciera discussed Katchen v. Landy, 382 U.S. 323 (1966), which involved an officer of a bankrupt corporation who made payments from corporate funds within four months of bankruptcy on corporate notes on which he was an accommodation maker. 57 U.S.L.W. at 4904. When the corporate officer later filed claims against the bankruptcy estate, the trustee counterclaimed that the payments were preferences. The Supreme Court held that the bankruptcy court had jurisdiction to order the corporate officer to surrender the preferences and that it could rule on the trustee's claim without according the corporate officer a jury trial. 382 U.S. at 327.

The Supreme Court in Katchen stated its decision turned on the bankruptcy court's having actual or constructive possession of the bankruptcy estate, Id., and its power and obligation to consider objections by the trustee in deciding whether to allow claims against the estate. 382 U.S. at 329-331. Granfinanciera approvingly cited Katchen for the proposition that by presenting claims [in the bankruptcy estate] respondents subjected themselves to all the consequences that attach to an appearance. 57 U.S.L.W. at 4905, footnote 14. Granfinanciera further stated "as Katchen makes clear by submitting a claim against the bankruptcy estate, creditors subject themselves to the court's equitable power to disallow those

claims...Id.

In the present case the Balsters each filed a proof of claim against the bankruptcy estate. Both claims were based on the debtor's alleged legal malpractice. Three days after filing their respective proofs of claim, the Balsters filed an adversary complaint which was also based on the legal malpractice claim. Following the teachings of Granfinanciera and Katchen, by filing the legal malpractice claim against the bankruptcy estate the Balsters have submitted their claims to the bankruptcy court's equitable jurisdiction. Thus the Balsters are not entitled to a jury trial in this adversary proceeding.

IT IS ORDERED that Melvin Balsters and Harold Balsters' demand for a jury trial is STRICKEN.

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

ENTERED: November 16, 1989