STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0459

David Forster, et al.,
Respondents,

vs.

Enid Theis, et al.,
Defendants,

Dougherty & Associates Financial Advisors, LLC, et al.,
Appellants.

Filed December 18, 2017
Affirmed
Kirk, Judge

Wright County District Court
File No. 86-CV-15-4902

Christopher P. Parrington, Andrew R. Shedlock, Kutak Rock, LLP, Minneapolis, Minnesota (for respondents)

Richard C. Landon, Gray, Plant, Mooty, Mooty & Bennett, P.A., Minneapolis, Minnesota; Andrew J. Steil, Christopher W. Harmoning, Gray, Plant, Mooty, Mooty & Bennett, P.A., St. Cloud, Minnesota; and Sheldon R. Brown, Young & Brown, LLP, Annandale, Minnesota (for appellants)

Considered and decided by Florey, Presiding Judge; Rodenberg, Judge; and Kirk, Judge.

S Y L L A B U S

Once a bankruptcy action is closed, and a bankruptcy trustee's exclusive authority to pursue a claim on behalf of the bankruptcy estate under the federal bankruptcy code has expired, an unsecured creditor may pursue a fraudulent-transfer voidance claim in district

court to the extent permissible under state law, so long as the bankruptcy trustee has not affirmatively acted to reopen the action in bankruptcy court.

O P I N I O N

KIRK, Judge

In this interlocutory appeal from the district court's denial of summary judgment in a fraudulent-transfer action, appellants, third-party transferees of business ownership and real property interests from a bankruptcy debtor and his wife, argue that respondents, unsecured creditors of the bankruptcy debtor, are barred from pursuing a fraudulent-transfer voidance claim against them in district court under the Minnesota Uniform Fraudulent Transfer Act (MUFTA).[1] Appellants maintain that a bankruptcy trustee has exclusive standing to pursue fraudulent-transfer voidance actions under the federal bankruptcy code on behalf of the bankruptcy estate, and that the bankruptcy court has exclusive subject-matter jurisdiction to hear such actions to the exclusion of individual unsecured creditors.

Because the bankruptcy action is closed and the bankruptcy trustee has not acted to reopen the action in bankruptcy court, we conclude that the district court now has subject-matter jurisdiction to hear an unsecured creditor's fraudulent-transfer voidance action to the extent the claim is allowed under applicable state law. We affirm.

---

[1] In 2015, the Minnesota Uniform Fraudulent Transfer Act was amended and renamed the Minnesota Uniform Voidable Transactions Act. *See* Minn. Stat. §§ 513.41-.51 (Supp. 2015). The amended statute does not apply to this case because the challenged transfers occurred before August 1, 2015, when the amended statute took effect. *See* 2015 Minn. Laws ch. 17, § 13, at 164; *see also Braylock v. Jesson*, 819 N.W.2d 585, 588 (Minn. 2012) ("When the Legislature merely clarifies preexisting law, the amended statute applies to all future or pending litigation. If, on the other hand, the amendment changes preexisting law, the amendment is not retroactive unless the Legislature states otherwise." (citations omitted)).

FACTS

Codefendant bankruptcy debtor David Theis and co-appellant business owner and third-party transferee Michael Dougherty are former business partners. In 1995, they formed Theis and Dougherty Financial Services, Inc. (T&D), a financial-services business out of which they conducted investment advising and brokerage activities. In 1999, they formed DM Management Group, LLP (DM), a real-estate business, and in 2001 they formed Securities Monitoring Group, LLC (SMG), an investment-advisory firm. The three businesses were operated out of an office building originally owned by DM in Buffalo, Minnesota. Michael Dougherty and David Theis ended their formal business partnerships around May 2012, and sometime thereafter, Michael Dougherty started a new business, co-appellant business Dougherty & Associates Financial Advisors, LLC (D&A).

Around 2008, respondents unsecured creditors, David and Sandra Forster (the Forsters), became clients of David Theis and T&D. On the advice of David Theis, the Forsters made $415,000 in investments that ultimately resulted in significant financial losses. In April 2009, David Theis began receiving complaints from the Forsters and other clients about his advice. In February 2012, the Forsters filed an arbitration action against David Theis with the Financial Industry Regulatory Authority (FINRA), claiming that he gave them fraudulent advice in recommending investments. In March 2013, the FINRA arbitration panel ruled in favor of the Forsters and awarded them $290,000. On August 20, 2013, the Forsters' FINRA award, plus interest, was converted into a judgment in district court.

On October 14, 2013, David Theis filed for bankruptcy with the U.S. Bankruptcy Court for the District of Minnesota. In his bankruptcy petition, and in his statement of financial

affairs accompanying the petition, David Theis listed the Forsters' FINRA judgment as an unsecured nonpriority claim. In August 2014, the bankruptcy court excepted from discharge the Forsters' judgment against David Theis in the bankruptcy action under 11 U.S.C. § 523(a)(4) (2014). The trustee for David Theis's bankruptcy estate filed the final accounting on January 23, 2015, and the bankruptcy action was closed on April 21, 2015.[2]

In an attempt to collect payment from David Theis on their FINRA judgment, the Forsters engaged in post-judgment discovery in district court. The Forsters uncovered several transfers of business ownership and real property interests made by David Theis to his wife, Enid Theis,[3] to Michael Dougherty, or to Michael Dougherty's wife, Correen Dougherty,[4] and subsequent transfers made by Enid Theis of some of those interests. The Forsters alleged these transfers to be fraudulent, and on October 2, 2015, they filed a fraudulent-transfer voidance claim in Wright County district court against David and Enid Theis, Michael Dougherty, and D&A under MUFTA. Minn. Stat. §§ 513.44, .45 (2014). The Forsters challenged the following transfers, the first six of which occurred before David Theis filed for bankruptcy in October 2013:[5]

---

[2] The Forsters cite the closing date as April 21, 2015 in their brief, and Michael Dougherty and D&A do not dispute this date. Both parties concede that the bankruptcy action was closed before the Forsters filed their MUFTA claim in district court on October 2, 2015. Thus, we rely on April 21, 2015, as the closing date for David Theis's bankruptcy action.

[3] David and Enid Theis are codefendants in this action but minimally participated in the district court's proceedings and did not take part in this appeal.

[4] Correen Dougherty is not a party to this action.

[5] The facts recited in this opinion, including the dates of and parties to each transfer, are supported by the record. To the extent that the district court made alternative findings, we rely only on those findings supported by the record for the purposes of this appeal.

1. On December 31, 2009, David Theis transferred his 50% partnership interest in DM to Enid Theis as a "gift."

2. On May 15, 2012, David Theis sold his 50% partnership interests in T&D (for $14,200) and SMG (for a promised $1) to Michael Dougherty.

3. On May 19, 2012, David Theis transferred his 50% co-ownership interest in real property in Idaho to Enid Theis.

4. In 2013, Enid Theis sold the interest in the Idaho property to the property's co-owner, J.B., for approximately $30,000.

5. On June 26, 2013, David and Enid Theis and Michael and Correen Dougherty transferred title to property in Annandale, Minnesota to Correen Dougherty for total consideration of $500 or less.

6. On July 10, 2013, Enid Theis sold the interest in DM to Correen Dougherty and to J.W., a business tenant at the Buffalo office building for $214,000. The sale of DM included the Buffalo office building.[6]

7. On June 2, 2014, David Theis transferred his 50% interest in the Buffalo marital home to Enid Theis for $500.

Michael Dougherty and D&A, and the Forsters, filed cross-motions for summary judgment in September 2016, which the district court denied on January 25, 2017. On January 26, Michael Dougherty and D&A submitted a letter to the district court requesting to file a motion to reconsider, and in relevant part, asking the court to address the issues of standing and subject-matter jurisdiction. The district court subsequently issued an order on February 3, substantively addressing the jurisdictional issues. In its February 3 order, the district court

[6] Respondents list the transfer of the Buffalo office building in their complaint as fraudulent, but neither the parties nor the district court addressed the sale as a separate transfer from the sale of DM. We do the same for the purposes of this appeal.

held that it had subject-matter jurisdiction to hear the Forsters' MUFTA claim, and that the Forsters had standing to bring their claim under state law. Michael Dougherty and D&A appeal the district court's jurisdictional rulings.[7]

ISSUE

Did the district court err in concluding that it had subject-matter jurisdiction to hear, and that the Forsters had standing to bring, a fraudulent-transfer voidance claim under state law?

ANALYSIS

I. The district court has subject-matter jurisdiction to hear the Forsters' fraudulent-transfer voidance claim because the Forsters filed their claim in district court after the bankruptcy action was closed.

a. The general rule does not apply because the bankruptcy action is closed.

Michael Dougherty and D&A contend that under the federal bankruptcy code the bankruptcy court has exclusive subject-matter jurisdiction to hear fraudulent-transfer voidance actions and that the authority to void the challenged transfers rests exclusively with the bankruptcy trustee to pursue on behalf of the bankruptcy estate, even after the bankruptcy

[7] Generally, a party cannot immediately appeal an order denying a motion for summary judgment unless "the [district] court certifies that the question presented is important and doubtful." Minn. R. Civ. App. P. 103.03(i); *Kastner v. Star Trails Ass'n*, 646 N.W.2d 235, 238 (Minn. 2002). However, certain orders are immediately appealable under Minn. R. Civ. App. P. 103.03(j), even without such certification. *Kastner*, 646 N.W.2d at 238. This includes orders denying summary-judgment motions based on subject-matter jurisdiction. *See McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995).

estate is closed. The Forsters argue that because the bankruptcy action is closed, they have exclusive authority to pursue their claim under MUFTA in state district court.[8]

It is well settled that the bankruptcy trustee is the representative of a bankruptcy estate and "has capacity to sue and be sued." 11 U.S.C. § 323 (2014); *Leffler v. Leffler*, 602 N.W.2d 420, 422 (Minn. App. 1999). Once a bankruptcy petition is filed, "all legal or equitable interests of the debtor in property as of the commencement of the case" become property of the bankruptcy estate, including any causes of action that have accrued to the debtor. *Leffler*, 602 N.W.2d at 422 (discussing 11 U.S.C. § 541(a)(1) (2014)). While a bankruptcy action is pending, the bankruptcy trustee may act on behalf of the bankruptcy estate to void fraudulent transfers of the bankruptcy debtor's interests in property that were made before the bankruptcy action was filed. *See* 11 U.S.C. §§ 548(a)(1), 544(b)(1) (2014).

First, pursuant to 11 U.S.C. § 548(a)(1), a bankruptcy trustee may void a fraudulent transfer made on or within two years of the bankruptcy petition being filed. Second, pursuant to 11 U.S.C. § 544(b)(1), a bankruptcy trustee may void a pre-petition transfer of the bankruptcy debtor's interest in property if an unsecured creditor of the bankruptcy estate would have had an allowable claim to void the transfer, even in part, under applicable state or federal law. *In re DLC, Ltd.*, 295 B.R. 593, 601, 602 (B.A.P. 8th Cir. 2003), *aff'd sub nom. Stalnaker v. DLC, Ltd.*, 376 F.3d 819 (8th Cir. 2004).

[8] The Forsters also argue that the bankruptcy trustee lacks the capacity to sue in district court but the Forsters' argument is irrelevant to the jurisdictional issues presented to this court on appeal. Thus, we decline to address their capacity-related arguments.

In turn, MUFTA provides a fraudulent-transfer voidance claim to an unsecured creditor of a debtor under state law. *See* Minn. Stat. § 513.44(a)(1) (2014). In an action for relief, an unsecured creditor may void a fraudulent transfer "to the extent necessary to satisfy the creditor's claim." Minn. Stat. § 513.47(a)(1) (2014). If a transfer is voidable by an unsecured creditor under section 513.47(a)(1), the creditor may recover the value of the asset transferred, or the amount necessary to satisfy its claim, whichever is less, from the first transferee or a person for whose benefit the transfer was made, or from any subsequent transferee other than one who took in good faith. Minn. Stat. § 513.48(b)(1), (2) (2014).

While a bankruptcy action is pending, if an unsecured creditor of a bankruptcy debtor has an allowable claim to void a fraudulent transfer under MUFTA or other applicable state law, federal bankruptcy code section 544(b)(1) provides that the trustee of a bankruptcy estate may act to void the entire fraudulent transfer in the bankruptcy action on behalf of the bankruptcy estate and all of its creditors. If a bankruptcy trustee voids a fraudulent transfer under federal bankruptcy code sections 544(b)(1) or 548(a)(1), the trustee may recover, for the benefit of the estate, the value of the property from the initial transferee or beneficiary, or from any immediate or mediate transferee of the initial transferee, other than a transferee who took for value or who took in good faith. 11 U.S.C. § 550(a), (b) (2014).

"As a general proposition it is well settled that [fraudulent] transfers may only be avoided [in a bankruptcy proceeding] by a trustee." *In re Foster*, 516 B.R. 537, 541 (B.A.P. 8th Cir. 2014), *aff'd*, 602 Fed. Appx. 356 (8th Cir. 2015). After a bankruptcy petition is filed, only the trustee has standing to exercise the voidance power granted in bankruptcy court. *See In re Michener*, 217 B.R. 263, 270 (Bankr. D. Minn. 1998). "'The trustee's single effort

eliminates the many wasteful and competitive suits of individual creditors' and 'protect[s] the creditors from one another.'" *Greenpond S., LLC v. Gen. Elec. Capital Corp.*, 886 N.W.2d 649, 655 (Minn. App. 2016) (quoting *Koch Refining v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1342-43 (7th Cir. 1987) (quotation omitted)), *review granted* (Minn. Jan. 17, 2017) *and order granting review vacated* (Minn. Sept. 27, 2017).

The parties recognize the general rule under the federal bankruptcy code that while a bankruptcy action is pending, the bankruptcy trustee has exclusive authority to void fraudulent transfers on behalf of the bankruptcy estate and its creditors, and that individual creditors are barred from pursuing a fraudulent-transfer voidance action in bankruptcy court to the extent that their claim is derivative. *See Nat'l City Bank v. Coopers & Lybrand*, 409 N.W.2d 862, 869-70 (Minn. App. 1987) (noting that if an unsecured creditor's claim is derivative, it belongs exclusively to the bankruptcy estate and may be pursued only by the bankruptcy trustee or debtor), *review denied* (Minn. Oct. 21, 1987); *see also* 11 U.S.C. § 541(a)(1). We also recognize that under the general rule if the challenged transfers were known during the pendency of the bankruptcy proceedings, the bankruptcy trustee could have exercised its exclusive authority to pursue a transfer voidance action in bankruptcy court to the extent allowed under sections 544(b)(1) or 548(a)(1). It is undisputed that the bankruptcy trustee did not do so.

Instead, after the bankruptcy action was closed the Forsters filed a fraudulent-transfer voidance claim in state district court. Thereafter, the bankruptcy trustee has taken no action to reopen the bankruptcy action or to assert the bankruptcy court's subject-matter jurisdiction over the cause of action. Accordingly, we need not determine whether the Forsters' MUFTA

claim is the type of claim that would belong exclusively to the bankruptcy court, because here there is no bankruptcy action pending. Given the bankruptcy trustee's inaction, we conclude that the general rule under the federal bankruptcy code does not preclude the Forsters from pursuing their claim in district court to the extent allowed under state law.

b. The bankruptcy trustee's authority to pursue fraudulent-transfer voidance actions on behalf of the estate expired under 11 U.S.C. § 546(a)(2) (2014) when the bankruptcy action was closed, and the trustee has not acted to reopen the action.

The Forsters argue that because David Theis's bankruptcy action is closed, the time period for the bankruptcy trustee to pursue a transfer voidance action in bankruptcy court has passed pursuant to 11 U.S.C. § 546(a)(2). In turn, Michael Dougherty and D&A maintain that because the bankruptcy trustee could act to reopen the bankruptcy action in order to abandon the fraudulent-transfer voidance action, and because the doctrine of equitable tolling preserves the cause of action on behalf of the bankruptcy estate, the district court lacks subject-matter jurisdiction.

As a preliminary matter, we note that the parties did not raise the time limitations under 11 U.S.C. § 546(a) (2014) or the doctrine of equitable tolling at the district court but did raise the issue of abandonment. The district court did not address section 546(a), equitable tolling, or abandonment in determining that it had subject-matter jurisdiction to hear, and that the Forsters had standing to bring, a transfer voidance action under MUFTA. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted).

Nonetheless, the rule that issues raised for the first time on appeal will not be addressed is not "ironclad." *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002); *see* Minn. R. Civ. App. P. 103.04 (noting that appellate courts may address issues as justice requires and may review rulings affecting the ruling from which an appeal is taken). A "well-established" exception to the rule allows an appellate court to consider an issue that is plainly decisive of the entire controversy, where the lack of a district court ruling causes no possible advantage or disadvantage to either party. *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687-88 (Minn. 1997) (deciding new issue on appeal where it was a novel issue of first impression, a statute-based theory, and relied on undisputed facts).

Section 546(a)(2) of the federal bankruptcy code provides that a trustee of a bankruptcy estate cannot commence an action or proceeding under sections 544 (2014) or 548 (2014) after the bankruptcy case is closed or dismissed. Here, it is undisputed that David Theis's bankruptcy action was closed on April 21, 2015, before the Forsters filed their claim in district court on October 2, 2015. Section 546(a)(2) establishes the time limit here because April 21, 2015, occurred later than the dates of the time limits imposed under 11 U.S.C. § 546(a)(1)(A), (B) (2014). Further, the date that the bankruptcy action was closed is dispositive, as it determines whether the district court now has subject-matter jurisdiction to hear the Forsters' claim under state law.

Michael Dougherty and D&A raised federal bankruptcy code section 546 and arguments related to abandonment and equitable tolling in their written brief and at oral argument. The Forsters did not directly cite to section 546(a) in their appellate brief, but they did argue that the federal bankruptcy code imposes time limits on the bankruptcy trustee's

ability to act. At oral argument they argued exclusively about the application of section 546(a). Given this record, we see no prejudice or disadvantage to either party in addressing the effect of section 546(a)(2) on the bankruptcy trustee's ability to act, or in considering the parties' related arguments, because it is dispositive of the jurisdictional question presented.[9]

On appeal, Michael Dougherty and D&A argue that because the bankruptcy trustee could reopen the bankruptcy action under 11 U.S.C. § 350(b) (2014) in order to abandon the fraudulent-transfer voidance course of action under 11 U.S.C. § 554(d) (2014), and because the doctrine of equitable tolling preserves the bankruptcy trustee's ability to pursue the cause of action on behalf of the bankruptcy estate, the district court lacks subject-matter jurisdiction to hear the Forsters' claim under state law. Section 554(d) provides that an undisclosed asset that is not otherwise administered in the bankruptcy action continues to be part of the estate, even after the bankruptcy is closed. Further, "[t]he doctrine of equitable tolling is read into every federal statute of limitation including § 546 . . ." of the federal bankruptcy code. *In re Pomaville*, 190 B.R. 632, 636-37 (Bankr. D. Minn. 1995). However, both of these arguments assume that the bankruptcy trustee has acted to reopen the bankruptcy case, which has not occurred here. Therefore, these arguments are irrelevant to this appeal, and we need not address them.

[9] Following this same rationale, we do not consider the issue of concurrent jurisdiction raised for the first time at oral argument by the Forsters, which was not presented to the district court, was not adequately briefed on appeal, and which Michael Dougherty and D&A had no opportunity to address. Issues not briefed on appeal are not properly before the appellate court. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

c. The district court did not err in determining that it had subject-matter jurisdiction to hear, and the Forsters had standing to bring, a fraudulent-transfer voidance claim under MUFTA.

With this background, we turn to the question of subject-matter jurisdiction presented on appeal. "Subject-matter jurisdiction is defined as not only authority to hear and determine a particular class of actions, but authority to hear and determine the particular questions the court assumes to decide." *Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004) (quotation omitted). Whether subject-matter jurisdiction exists presents a question of law, which we review de novo. *Tischer v. Hous. & Redev. Auth.*, 693 N.W.2d 426, 428 (Minn. 2005), *aff'd*, 693 N.W.2d 426 (Minn. Mar. 24, 2005). "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). Standing is also a question of law that this court reviews de novo. *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014).

As a preliminary matter, the Forsters argue that Michael Dougherty and D&A consented to the district court's subject-matter jurisdiction in this case because they failed to object to the district court's jurisdiction earlier in the proceedings. However, a party "may not consent to a court acting when it has no subject-matter jurisdiction." *Gummow v. Gummow*, 356 N.W.2d 426, 428 (Minn. App. 1984); *see McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 590 (Minn. 2016) (noting that unlike a defect in the court's subject-matter jurisdiction, parties can waive defects in personal jurisdiction). "[S]ubject-matter jurisdiction, which concerns the court's ability to consider a question, and standing, which concerns a party's right to bring a particular action . . . may be challenged at any time."

Cochrane v. Tudor Oaks Condo. Project, 529 N.W.2d 429, 433 (Minn. App. 1995), *review denied* (Minn. May 31, 1995).

"Federal district courts have exclusive jurisdiction over bankruptcy cases and nonexclusive jurisdiction over all proceedings that arise under, or relate to, them." *Michener*, 217 B.R. at 266; *see* 28 U.S.C. § 1334(a), (b) (2014). The federal district court may then refer bankruptcy cases and proceedings to bankruptcy judges for a hearing and final determination in bankruptcy court, subject to appeal. *Michener*, 217 B.R. at 266-67. A state district court is a court of general jurisdiction that has, with limited exceptions, the power to hear all civil cases. *Irwin*, 686 N.W.2d at 880 (citing Minn. Const. art. VI, § 3). We recognize that the federal bankruptcy code gives federal district courts exclusive subject-matter jurisdiction over bankruptcy cases and proceedings arising thereunder, but we reiterate that, here, there is no bankruptcy action pending for the bankruptcy court to assert its jurisdiction over. The only pending action is a fraudulent-transfer voidance claim under MUFTA in Wright County district court, and the power of state district courts to hear civil cases includes such actions.

State courts in at least two jurisdictions have recognized the principle that once the statutory time period for the bankruptcy trustee to pursue an action on behalf of the bankruptcy estate has expired under section 546 of the federal bankruptcy code, an unsecured creditor may bring an action against a fraudulent transferee of a bankruptcy debtor under state law. *See Dixon v. Bennett*, 531 A.2d 1318, 1324 (Md. Ct. Spec. App. 1987) (finding that an unsecured creditor can bring a state cause of action in state court once the time limit for the trustee to bring an action in bankruptcy court has expired under 11 U.S.C. § 546), *cert. denied*, 536 A.2d 664 (Md. 1988), *and overruled on other grounds by BAA, PLC v. Acacia Mut. Life*

Ins. Co., 929 A.2d 1 (Md. 2007); *Casey Nat'l Bank v. Roan*, 668 N.E.2d 608, 612-13 (Ill. App. Ct. 1996) (finding that once a bankruptcy trustee's sole authority to pursue fraudulently conveyed assets expires under 11 U.S.C. § 546(a), and the trustee has no viable cause of action, an unsecured creditor may pursue his or her own cause of action in state district court), *review denied* (Ill. Dec. 4, 1996).

We are persuaded by the reasoning articulated by those state appellate courts. Here, the bankruptcy action is closed, the time for the bankruptcy trustee to act has expired under federal bankruptcy code section 546(a)(2), and the bankruptcy trustee has not acted to reopen the bankruptcy action to either abandon the cause of action or to pursue it under the doctrine of equitable tolling. As such, there is no pending bankruptcy action, and the bankruptcy court has not asserted its subject-matter jurisdiction to hear a voidance action related to the fraudulent transfers alleged. Thus, we conclude that the state district court has subject-matter jurisdiction to hear, and that an unsecured creditor has standing to bring, a fraudulent-transfer voidance claim in state district court to the extent that the claim is allowed under state law.

D E C I S I O N

Because David Theis's bankruptcy action is closed and the bankruptcy trustee has not acted to reopen the action in bankruptcy court, the district court has subject-matter jurisdiction to hear the Forsters' claim, and the Forsters, as unsecured creditors of David Theis, have standing to bring their claim against Michael Dougherty and D&A, as third-party transferees of David Theis, to the extent that the Forsters have a valid claim under state law.

Affirmed.