

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

DENNIS WAYNE OTT, f/d/b/a
Denniott Corporation

Debtor

IN BANKRUPTCY

No. 80-00026

ROLLINS OIL COMPANY

Plaintiff

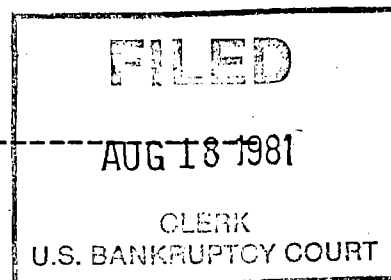
Adv. Pro. 80-0056

vs.

DENNIS WAYNE OTT

Defendant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER



The plaintiff having filed a complaint herein to have the debt due it from the defendant to be nondischargeable; and the defendant having filed an answer denying the allegations of the complaint and putting the plaintiff to its specific proof thereon; and a pre-trial having been held before the Court on the question of the matter being Res Judicata by virtue of a jury trial action in Minnesota; and this Court, having duly considered the arguments of counsel relative to the plea of Res Judicata, entered an order denying the plea of Res Judicata; and thereafter a second pre-trial having been held, at which time the procedure to be followed for the trial resulted in the court requesting briefs as to the admissibility of evidence of two similar cases against the defendant in the State of Minnesota which were ruled on by default as attempting to show a pattern of conduct; and the defendant having raised the question of collateral estoppel based on the verdict of the jury in the Minnesota action which found a total liability to the plaintiff in the sum of \$21,258.11, and a separate answer of damages by virtue of misrepresentation in the sum of \$1,500.00; and the court having requested that a copy of the instructions to the jury in the Minnesota case be furnished to it; and the Court having duly

FINDINGS OF FACT

1. The following verdict was submitted to the jury and answers duly made:

'We, the jury empaneled and sworn for the trial of the above-entitled action, do answer the questions submitted as follows:

QUESTION NO. 1:

Is defendant Dennis Ott personally obligated on the \$21,158.06 check given to plaintiff Rollins Fuel Oil Co. on July 1, 1974?

Answer: Yes
(Yes or No)

QUESTION NO. 2:

Did defendant Dennis Ott commit a fraud upon plaintiff Rollins Fuel Oil Co. by any of his representations regarding the quantity, quality, or availability of the material to be supplied Rollins Fuel on or after March 27, 1974?

Answer: Yes
(Yes or No)

QUESTION NO. 3:

If your answer to Question No. 2 was "yes", then answer this question:

What damages were sustained by Rollins Fuel Oil Co. as the direct and natural result of relying on any such misrepresentations?

\$ 1500.00

Dated: October 2, 1979.

s/ Clifford A. Fox
Foreperson

2. The form of the Special Verdict contained a typographical error in that the amount of the check referred to in Question No. 1 should have been \$21,058.06 which is the true and correct amount entered on Plaintiff's Exhibit 2.

CONCLUSIONS OF LAW

1. Plaintiff Rollins Fuel Oil Co. is entitled to judgment against defendant Dennis W. Ott in the amount of \$21,058.06, together with its costs and disbursements herein.

ORDER FOR JUDGMENT

Let Judgment be Entered Accordingly.

Entry of judgment is stayed for 30 days from the date hereof.

Dated: October 2, 1979. BY THE COURT:

s/ Diana E. Murphy
Diana E. Murphy
Judge of District Court"

5. That the Minnesota action was brought on the basis of misrepresentation as to the sale of antifreeze being recycled ethylene glycol and on the question of a check given by the defendant to the plaintiff which was not honored because of insufficient funds.

6. That the trial in the state court lasted between September 26, 1979 and October 2, 1979, and that the judgment was entered on the verdict above described.

7. That the instructions of the trial judge informed the jury that the plaintiff was bringing the action on two theories: (1) the liability on the basis of the check, and (2) on the basis of misrepresentation and fraud as to the anti-freeze solution sold to it.

8. That the jury found, as stated above in the verdict, that the defendant had misrepresented the product or in some way became liable to the plaintiff for misrepresentation, and determined that the amount of damage caused by the misrepresentation was the sum of \$1,500.00.

9. That defendant concedes that plaintiff is entitled to an order and judgment of the court finding the debt non-dischargeable as to the sum of \$1,500.00 and dischargeable as to the balance of the amount claimed.

10. That plaintiff desires a new trial as to the basis of liability and desires to present to the Court, on the theory of a pattern of conduct, facts alleged and given in two default actions against the defendant, Dennis Wayne Ott, in the State of Minnesota.

11. That the charge by the trial judge used identical standards in determining the factual issues as to those of Section 17 of the Bankruptcy Act.

12. That the plaintiff has had its day in Court; that the verdict stands as above stated; that no change or correction was made to the amount of \$1,500.00 damages, and now the plaintiff wishes to relitigate the entire matter to overcome the specific findings of the Minnesota jury.

13. That the Supreme Court of the United States has stated that if a state court should determine factual issues using standards identical to those of Section 17, then collateral estoppel, if applicable, would bar relitigation of those issues. As stated by Judge D. E. Ihlenfeldt, In Re Richard H. Frahm, CCH Para. 67,604, it would be a denial of justice to require the defendant to retry the entire matter a second time in Bankruptcy Court and give the plaintiff a second chance, so to speak, as to its allegations and complaint.

14. That on the basis of the decision In Re Brown v. Felson, 442 U.S. 127 (1979), and the complete legal summary of collateral estoppel in the Frahm case, this court concludes that the doctrine of collateral estoppel described in the footnote of the Brown case is fully applicable herein, and that the case is practically identical to the Frahm case only that in this case it is the plaintiff who wants the second trial.

15. That the court would be remiss in its duties to require a relitigation of all of the allegations herein.

CONCLUSIONS OF LAW

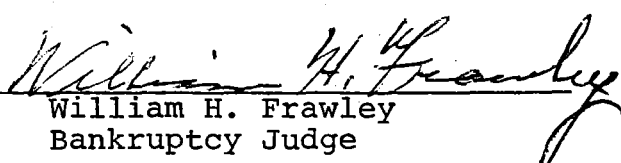
That the court enter an order determining that the debt due to the plaintiff, Rollins Oil Company, is dischargeable except as to the sum of \$1,500.00.

O R D E R

NOW, THEREFORE, IT IS ORDERED:

1. That the claim of the plaintiff, Rollins Oil Company, is dischargeable herein except as to the sum of \$1,500.00.
2. That no costs be taxed to either of the parties.

Dated: August 18, 1981.



William H. Frawley
Bankruptcy Judge