

7/23/80

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

In Re ADVERSARY NO. 80-0056

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

Debtor

ROLLINS OIL COMPANY

Plaintiff

-vs-

DENNIS WAYNE OTT

Defendant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
and ORDER

The plaintiff having duly filed a complaint herein to have the debt due it from the defendant determined to be non-dischargeable; and the defendant having duly filed an answer denying all of the allegations of the complaint and putting the plaintiff to its specific proof thereon, and claiming said debt to the plaintiff to be entirely dischargeable; and a pre-trial having been held before the Court; and the question of res adjudicata having been raised; and counsel having been directed to file briefs relative to said question of res adjudicata in the matter; and the Court having heard the arguments of counsel, and having considered the briefs duly filed, and upon all of the record, briefs and arguments of counsel, and the Court being fully advised in the premises makes the following FINDINGS OF FACT:

1. That the defendant, Dennis Wayne Ott, duly filed a petition for relief in this Court, being Bankruptcy No. 80-00026.
2. That the plaintiff duly filed a complaint to determine the debt due it as non-dischargeable, as above stated; and the defendant having denied the same, as above stated.
3. That on or about the 7th day of December, 1979, judgment was entered against the defendant in the District Court of Hennepin County, State of Minnesota, in the amount of \$21,258.11, and is the basis of the plaintiff's claim herein.

4. That defendant, by his argument, contends that the only amount non-dischargeable is the sum of \$1,500.00, being the answer to Question #3 of the special verdict in the above entitled action which is dated October 2, 1979.

5. That it appears there are facts to be determined in order to make a finding as to the dischargeability of said debt.

6. That the question of res adjudicata does not apply, and that the Court is not confined to a review of the judgment and record in the prior State Court proceedings in determining the dischargeability of a plaintiff's debt. See Brown v. Felson, 442 U.S. 127, 60 L. Ed. 2d 767, 99 S Ct 2205 (1979).

7. That said action should proceed to trial.

CONCLUSIONS OF LAW

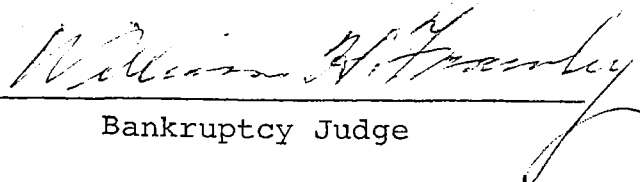
That an order be entered determining that res adjudicata does not apply in this action and directing that the case be set for trial.

O R D E R

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED: That the doctrine of res adjudicata does not apply as to the dischargeability question raised in this action, and that the Clerk forthwith set the case for trial pursuant to law.

Dated: July 23, 1980.

BY THE COURT:

  
Bankruptcy Judge