

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

DENNIS A. LIMA,

Debtor

No. 81-0017

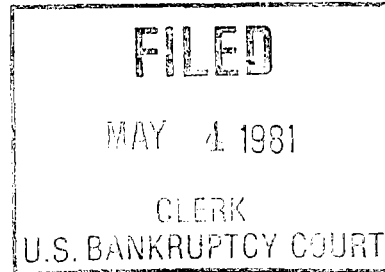
ROBIN S. SCHOELZEL FROEBA,
RONALD SCHOELZEL, RUTH
SCHOELZEL and STATE FARM
MUTUAL AUTOMOBILE INSURANCE
COMPANY

Plaintiffs

vs.

DENNIS A. LIMA

Defendant.



ORDER DISMISSING ACTION

The above named plaintiffs having duly filed a complaint for determination that any claim or claims for contribution by the plaintiffs against the defendant-debtor not be dischargeable by virtue of the bankruptcy proceedings; and the defendant having duly appeared by his attorney, and having filed an answer to the complaint on February 17, 1981, and on the same date said defendant filed an answer to the complaint requesting dismissal of plaintiffs' complaint and a counterclaim for attorney's fees; and having duly filed a motion and notice of motion to dismiss the complaint on the grounds that it does not state facts sufficient to constitute a bar to debtor's discharge, and for such other relief as may be just, including attorney's fees to the debtor; and the parties having duly filed a joint pre-trial statement which is on file herein separately setting up the plaintiffs' contentions, the defendant's contentions and the fact that there are no substantial contested facts relative to the matter; and a hearing on said motion to dismiss having been duly noticed and having been heard on March 9, 1981; and the parties having appeared by their respective counsel and the debtor in person; and the Court having heard the arguments of counsel and the contentions claimed by the respective parties;

and briefs having been duly filed by counsel as ordered at said pre-trial conference, and the Court being fully advised in the premises, FINDS:

1. That said debtor duly filed a petition for bankruptcy herein on the 26th day of August, 1980; that the first meeting of creditors was held on the 15th day of September, 1980, after notice having been sent to all parties in interest, and that the order provided that the last day for filing objections to discharge and a complaint to determine dischargeability be November 17, 1980.

2. That the plaintiffs herein filed a complaint to determine dischargeability of debt on the 28th day of January, 1981, after the last day for filing a complaint as ordered by the Court.

3. That said complaint is in reference to contribution for damages arising out of an automobile accident.

4. That the schedules and amended schedules list the plaintiffs, Robin S. Schoelzel, State Farm Mutual Automobile Insurance Company, Ronald Schoelzel and Ruth Schoelzel as having a contingent and undisputed, unliquidated, potential claim for contribution, or under subrogation clause of uninsured motorist coverage arising out of an automobile accident on January 1, 1978, and said plaintiffs duly received notice thereof.

5. That said schedules make the following statement prior to Schedule A-3:

"TO WHOM IT MAY CONCERN:

Dennis Lima was involved in an automobile accident on January 1, 1978. He was the driver of a van. The driver of the other automobile was Robin Schoelzel. Mr. Lima and Miss Schoelzel collided in a snow storm in a head-on collision. April Barker, Margaret Miles, Beverly J. Bremness and Gloria Venet were passengers in the automobiles.

Mr. Lima did not have a liability policy in effect at the time.

Mr. Lima has a potential claim against Miss Schoelzel and her insurance company. Miss Schoelzel has a potential claim against Mr. Lima. All passengers have claims against both Mr. Lima and Miss Schoelzel. If Mr. Lima should sue and win, any recovery he

would get would likely go to passengers on the contribution claims of Miss Schoelzel and her insurance carrier. Therefore, suit is untenable and Mr. Lima's claim is likely worthless."

6. That said matter was determined to be a no asset case and the report of the interim trustee so stating is on file herein.

7. That on the 18th day of December, 1980, the debtor was duly discharged and the discharge hearing was held on the 12th day of January, 1981, as shown by the docket in said matter.

8. That under the Bankruptcy Code as amended in 1978 the type of claim and the listing thereof was greatly broadened, and that the narrow distinction for proveable claims, fileable claims and the general limitation of tort claims not reduced to judgment have been abolished under the new Code.

9. That the bankruptcy schedules list the plaintiffs herein and notice of the bankruptcy was given to them, and that any claim they have as to the question of dischargeability are barred by the order limiting the time for commencement of such actions to the 17th day of November, 1980.

10. That as to the question of the counterclaim and claim for attorney's fees, the same is not at issue at this time and is not ruled upon.

11. That the order of discharge to the debtor-defendant above named provides in part, as follows:

"1. The above-named debtor is released from all dischargeable debts.

2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under 11 U.S.C. §523;

(b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4) and (6) of 11 U.S.C. §523(a);

(c) debts determined by this court to be discharged under 11 U.S.C. §523.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from commencing, continuing or employing any action, process or act to collect, recover or offset any such debt as a personal liability of the debtor, or from property of the debtor, whether or not discharge of such debt is waived."

That said order should remain in full force and effect and that each of the plaintiffs above named be bound by said order.

CONCLUSIONS OF LAW

1. That an order be entered dismissing the plaintiffs' claim on the merits without costs and continuing the jurisdiction on the counterclaim for further determination, and that the provisions of the discharge order above quoted remain in full force and effect.

O R D E R

NOW, THEREFORE, IT IS ORDERED:

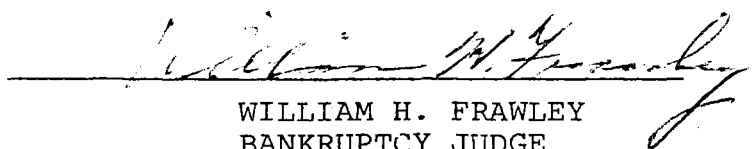
1. That the claim of the plaintiffs herein be and the same is hereby dismissed upon the merits and without costs.

2. That the issue of the counterclaim and claim for attorney's fees is reserved for the further determination of the Court.

3. That the provisions of the discharge of the debtor shall remain in full force and effect, and that the plaintiffs are enjoined from commencing, continuing or employing any action, process or act to collect, recover or offset any such debt as a personal liability of the debtor or from the property of the debtor.

Dated: May 4, 1981.

BY THE COURT:


WILLIAM H. FRAWLEY
BANKRUPTCY JUDGE