

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED
JUL 30 1984
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U.S. BANKRUPTCY COURT

In re: Case Number:
RICHARD EDWARD RUF, LM7-82-00553
Debtor.

BARLOW CHEMICAL & FERTILIZER,
INC.,
Plaintiff, Adversary Number:
vs. 83-0192-7
RICHARD EDWARD RUF,
Defendant.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER DISMISSING COMPLAINT TO REVOKE DISCHARGE

Barlow Chemical & Fertilizer, Inc., by Attorney Gene B. Radcliffe of Radcliffe and Labbs, having filed a Complaint; and Debtor Richard Edward Ruf, by Attorney Galen W. Pittman of Johns, Flaherty & Gillette, S.C., having filed an Answer; and a hearing having been held; and the matter being submitted on briefs; the Court, having considered the evidence and the briefs of counsel and the complete record and file herein, and being fully advised in the premises, FINDS THAT:

1. In June of 1981 Debtor gave the Bank of Holmen a security interest in certain crops.

2. On September 4, 1981, the Debtor gave Barlow Chemical & Fertilizer, Inc. (hereinafter BCF) a security interest in the crops previously secured by the Bank of Holmen. The Debtor, in his security agreement with BCF, warrantied that the crops used as collateral were free from all encumbrances and security interests.

3. An order for relief under Chapter 7 of the Bankruptcy Code was entered upon petition of the Debtor on April 5, 1982; the first meeting of creditors was held on April 28, 1982; and June 28, 1982, was fixed as the last date for filing complaints to determine dischargeability.

4. In January or February of 1982 Douglas Farmer, President of the Bank of Holmen, contacted BCF regarding the conflict in the priority of security interests in the Debtor's crops.

5. In the Spring of 1982, when a check in satisfaction of the Bank of Holmen's claim was errantly made payable to the Bank of Holmen and BCF, the Bank of Holmen again had contact with BCF regarding the conflict in the priority of security interests in the Debtor's crops.

6. On April 27, 1982, BCF's attorney sent a letter to the Bank of Holmen facilitating harvest of the secured crops pending the resolution of the conflict in the security interests.

7. The Debtor was granted a discharge on August 5, 1982.

Discussion

8. Under 11 U.S.C. sec. 727(d)(1)(1982) the court may revoke a discharge if "such discharge was obtained through fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge".

9. Sec. 727(d)(1) is to be construed strictly against the objector to the discharge and liberally in favor of the debtor. In re Lyons, 23 B.R. 123, 125 (Bankr.E.D.Va. 1982).

10. The party requesting a revocation of a debtor's discharge under sec. 727(d)(1) has the burden of proving it did not know of the fraud until after the discharge. In re McElmurry, 23 B.R. 533, 535 (W.D.Mo. 1982).

11. BCF had notice of the conflict in the priority of security interests in the Debtor's crops several months prior to discharge. See paragraphs 4, 5, and 6² supra.

12. When BCF received notice of the conflict with the Bank of Holmen over the priority of security interests in the Debtor's crops, BCF had constructive knowledge that the alleged fraud had occurred and was required to diligently investigate and pursue

²Knowledge of an alleged fraud is imputed to a creditor through its attorney. In re Douglas, 11 F. 403, 405 (W.D.Pa. 1882), see Link v. Wabash Railroad Co., 370 U.S. 626, 634, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962).

available pre-discharge remedies. See In re McElmurry, 23 B.R. 533 (W.D.Mo. 1982).

13. BCF was required to pursue available discharge remedies because "a chief purpose of the bankruptcy laws is to 'secure a prompt and effectual administration and settlement of the estate . . . within a limited period'". See Katchen v. Landy, 382 U.S. 323, 328, 86 S.Ct. 467, 15 L.Ed.2d 391 (1966).

14. Assuming this Court is empowered to award costs and attorney's fees,³ this is not an appropriate case in which to grant such a judgment.

CONCLUSION OF LAW

This Court should not revoke the discharge of the Debtor under 11 U.S.C. sec. 727(d) because the complainant has failed to prove he did not have knowledge of the alleged fraud until after the discharge.

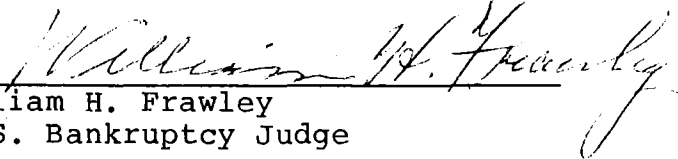
³See 11 U.S.C. sec. 523(d) (consumer debtor may recover costs and attorneys' fees in sec. 523 cases), but see 11 U.S.C. sec. 101(7) (consumer debt defined) and compare sec. 523 with sec. 727 (latter is silent regarding costs and attorneys' fees); see also Fed.R.Bankr.P. 7054 (b)(costs).

ORDER

IT IS ORDERED THAT Judgment may issue DISMISSING, without costs, the Complaint to Revoke Discharge filed in this matter by Barlow Chemical & Fertilizer, Inc.

Dated: July 30, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge