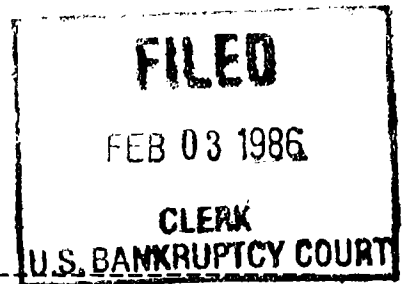


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

WILLIAM J. LAUFENBERG
LINDA J. LAUFENBERG

EF11-84-01345

Debtors.

CO-OP CREDIT UNION,

Plaintiff,

Adversary Number:

v.

85-0138-11

WILLIAM J. LAUFENBERG and
LINDA J. LAUFENBERG,

Defendants.

OPINION AND ORDER

Co-op Credit Union (plaintiff) by Gene B. Radcliffe has initiated this adversary proceeding against the debtors. The debtors are represented by Paul J. Kenkel. The plaintiff alleges that the debtors have committed certain fraudulent acts and asks the court to grant: 1) an order denying debtors a discharge of their debts; or 2) an order determining that debts the debtor owes to the plaintiff be non-dischargeable. The adjourned pre-trial conference was held on November 15, 1985.

The debtors assert the affirmative defenses of collateral estoppel and res judicata. The debtors argue that they were acquitted on criminal charges for these same matters in a jury

trial. The issue of whether an estoppel applies to this matter has been submitted by briefs. It is the belief of this court that an acquittal on criminal charges in state court does not act as res judicata to a subsequent bankruptcy adversary proceeding.

Even though the two cases involve the same facts, an acquittal in a criminal case does not bar a subsequent civil suit. United States v. National Association of Real Estate Boards, 339 U.S. 485, 493 (1950). "It has been repeatedly held that though the civil suit is bottomed on the same facts, it is not barred by the prior judgment or acquittal in the criminal case." Id. at 493-494.

The burden of proof in a criminal case is guilty beyond a reasonable doubt. This is not the degree of proof that is required in adversary proceedings such as this. See In re Bogstad, No. 85-1392 (7th Cir. 1985).

The difference in degree of the burden of proof in criminal and civil cases precludes application of the doctrine of res judicata. The acquittal was merely an adjudication that the proof was not sufficient to overcome all reasonable doubt of the guilt of the accused.

Helvering v. Mitchell, 303 U.S. 391, 397 (1938).

These cases are dispositive of the issue whether the prior criminal acquittal acts as an estoppel to this present adversary proceeding.

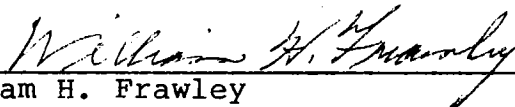
This decision shall stand as and for findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the judgment of acquittal does not estop this adversary proceeding.

Dated: February 3, 1986.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Paul J. Kenkel
Attorney Gene B. Radcliffe