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SEP 5 1986

CLERK, U.S.
BANKRUPTCY COURT
CASE NO

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

In re: Case Number:

RICHARD BRUCE PAULI WF7-85-01872

Debtor.

DOUGLAS J. KRUSE and
JAQUETTA A. KRUSE,

Plaintiffs, Adversary Number:

v. 85-0353-7

RICHARD BRUCE PAULI,

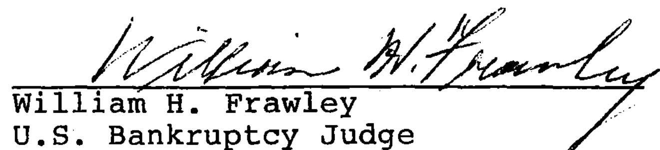
Defendant. ORDER

The court having this day entered its memorandum opinion, findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that the obligation owed by the debtor to Douglas and Jaquetta Kruse is found to be dischargeable and the complaint objecting to the discharge of such debt is hereby dismissed.

Dated: September 5, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Curtis N. Lein
Richard B. Pauli

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RICHARD BRUCE PAULI,

Defendant.

MEMORANDUM OPINION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Douglas and Jaquetta Kruse (plaintiffs), by Curtiss Lein, have initiated this adversary proceeding pursuant to 11 U.S.C. § 523(a)(2)(A) and Bankruptcy Rule 4007. The plaintiffs seek to except a debt allegedly owed to them by the debtor from discharge. The debtor appears pro se and contests the complaint. A trial was held in this proceeding on August 21, 1986. Both parties have been provided opportunity to present evidence and make arguments.

The plaintiffs and the debtor were close personal friends in the latter part of 1982. At that time, the plaintiffs loaned the debtor $500.00 as a favor so that the debtor could investigate a

possible business venture. The debtor utilized the $500.00 to explore the possibility of obtaining the rights to the use of the Olympic logo with respect to using same in conjunction with the manufacturing and marketing of bicycle handlebar caps. The debtor met with a representative of the Olympic Committee and apparently had a very favorable reception. However, the debtor was not granted express authority to use the Olympic logo. The representative of the Olympic Committee encouraged the debtor to pursue his endeavor and requested that the debtor have an attorney prepare and submit a contract to the Olympic Committee for inspection and possible approval.

The plaintiffs are part owners of two bicycle shops. The debtor, upon his return, informed the plaintiffs of the nature of the business venture and the results of his investigation. The debtor was in need of financing and offered the plaintiffs an opportunity to invest capital into the business venture.

On February 18, 1983, the debtor and the plaintiffs entered into a written agreement that both parties considered to create a limited partnership. The plaintiffs tendered a check to the debtor at the time of the execution of said agreement and pursuant to the terms of same in the amount of $5,000.00. Under the terms of the agreement, the plaintiffs were to tender another $5,000.00 at a subsequent date. The testimony revealed that it was contemplated by the parties to the contract that capital was to be expended in attempting to obtain the approval and support of the Southland Corporation and to have the Southland

Corporation join in the business venture. Apparently the Southland Corporation had certain contractual agreements with the Olympic Committee relating to the use of the Olympic logo in connection to the sport of bicycling. The exact nature of the rights Southland had to the use of the Olympic logo has not been presented before the court. However, both parties believed that the approval of Southland was an important component in achieving a financially successful business venture and that such approval had not yet been granted.

The debtor made efforts to obtain the approval of Southland. In these efforts the debtor had a corporate presentation of the product prepared and exhibited to Southland. The debtor also had his attorney draft and submit several contracts to the Olympic Committee for their inspection and approval. These efforts of the debtor proved not to be successful. In October of 1983 the Olympic Committee mailed a letter to the debtor stating that they would not authorize the use of the Olympic logo in the debtor's business ventures. The debtor presented this letter to the plaintiffs on the date of its arrival. The plaintiffs immediately informed the debtor that they wanted nothing more to do with the business venture. The plaintiffs also demanded that the debtor return the $5,000.00 tendered by the plaintiffs.

The plaintiffs now allege that the debtor obtained money from them through the use of false pretenses, false representation, or actual fraud. The plaintiffs contend that the $5,000.00

obtained from them by the debtor constitutes an obligation that should be excepted from discharge. Section 523(a)(2)(A) of the Bankruptcy Code provides:

> § 523. Exceptions to discharge.
> (a) A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt--
> ...
> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--
> (A) false pretenses, a false representation or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

Exceptions to discharge should be construed strictly against creditors and liberally in favor of debtors. Gleason v. Thaw, 236 U.S. 558 (1915). The plaintiffs have the burden in this proceeding of proving all of the elements of the exception. In re Hofkens, (Bankr. E.D. Wis. Adv. #85-0109, June 30, 1986); In re Rogers, (Bankr. W.D. Wis. Adv. #85-0010-7, July 23, 1986). In order to have a debt excepted from discharge under § 523(a)(2)(A) the plaintiffs must show that:

> 1.) The debtor obtained money ... through representations known to be false or made with reckless disregard for the truth amounting to willful misrepresentation;
> 2.) The debtor had an intent to deceive; and,
> 3.) The creditor actually and reasonably relied on the representation.

Matter of Platt, 47 B.R. 70, 71 (Bankr. W.D. Wis. 1985).

The plaintiffs rely primarily on one sentence in the written agreement of February 18, 1983, to show that the debtor made false representations to them. The pertinent part of the written

agreement provides: "That said HBC Company shall cause to be manufactured handlebar caps with an Olympic symbol pattern thereon and that party of the first part [debtor] shall manage said business and the party of the second part [plaintiffs] shall have no control over said management." The plaintiffs allege that this sentence in the mutually signed written agreement, as well as other unspecified actions of the debtor, manifest the impression that the debtor had the authority to use the Olympic logo. Hence, the plaintiffs allege that the debtor made false representations to them to procure financing and that the debt so created should be excepted from discharge.

The debtor did not willfully make any misrepresentations to the plaintiff. The testimony at trial revealed that the debtor had indicated to the plaintiffs that he had the "support" of the Olympic Committee. The uncontradicted evidence was that the plaintiffs were never advised that the debtor had written authority to use the Olympic logo. It cannot be said that the representation of the debtor that he had the "support" of the Olympic Committee amounts to a willful misrepresentation.

Further, the debtor did not intend to deceive the plaintiffs. The debtor expended a considerable amount of time and effort in this business venture. He did in fact believe that he had the support of the Olympic Committee. The testimony revealed that the debtor had been verbally provided with encouragement and support from the Olympic Committee representative. The debtor fully believed that the venture could produce a significant

profit for all involved; although, he understood and communicated to the plaintiffs that a profit was not guaranteed. The debtor was at all times perfectly candid with the plaintiffs about the business venture. With respect to the written agreement of February 18, 1983, the debtor had his attorney prepare the document and then presented it to the plaintiffs. The debtor advised the plaintiffs that he would like them to carefully consider whether they actually wanted to enter into the agreement and asked them to take a couple of days to think it over. The debtor did not pressure the plaintiffs into signing the agreement without the opportunity to fully consider the consequences of their actions.

Finally, the plaintiffs could not reasonably rely on the representations of the debtor to conclude that the debtor had the authority to use the Olympic logo. The statements by the debtor that he had the "support" of the Olympic Committee did not warrant reliance by the plaintiffs that the debtor had authority to use the Olympic logo. Nor did the one sentence in the written agreement stating that the "company shall cause to be manufactured handlebar caps with an Olympic symbol pattern thereon," warrant reasonable reliance. The plaintiffs knew that an important part of the business venture, securing the approval of Southland, was still contingent. A reasonable prudent person entering into such a business venture would have requested to see a contract or other written documentation representing and verifying the actual facts as to what rights the partnership would

have to the use of the Olympic logo. The plaintiffs did not exercise the discretion to make such a request. The plaintiffs instead relied on the debtor's enthusiasm about the business venture. To the extent that the plaintiffs relied on the representations of the debtor to conclude that the debtor had the authority to use the Olympic logo, that reliance was not reasonable.

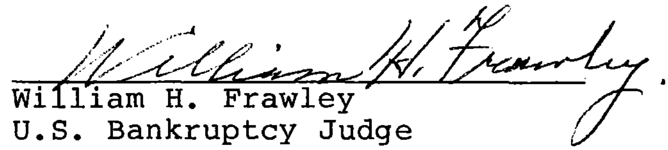
It is also noted that the parties considered the approval and support of the Southland Corporation a very important part of the business venture. Still, this aspect was not explicitly placed in the written agreement of February 18, 1983. The plaintiffs knew that the debtor intended to use some of the capital of the company to attempt to gain the approval and support of the Southland Corporation. Apparently the plaintiffs did not investigate what rights and the exclusivity of the rights that the Southland Corporation held with respect to the use of the Olympic logo.

It is the conclusion of the court that to the extent there is a debt owed by the debtor to the plaintiffs, such debt should not be excepted from discharge. The plaintiffs have not succeeded in sustaining their burden of proving that such a debt should be excepted from discharge pursuant to 11 U.S.C. § 523 (a)(2)(A). It is unfortunate that the plaintiffs invested their money in a venture that failed to materialize. However, that is a risk involved in these types of ventures. The loss was not a result of fraud on the part of the debtor.

This opinion shall constitute findings of fact and conclusions of law in accordance with bankruptcy rule 7052.

Dated: September 5, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge