United States Bankruptcy Court
District of Delaware

CHIEF JUDGE BRENDAN LINEHAN SHANNON

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WILMINGTON, DE 19801
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January 15, 2016

Christina Pappoulis, Esquire
Blakely Gregory and Pappoulis
5307 Limestone Road, Suite 103
Wilmington, DE 19808

Mr. Jerzy Wirth
312 Riblett Lane
Wilmington, DE 19808

Mr. Floyd White
210B Highland Boulevard
New Castle, DE 19720

Re: In re: Ted Pridgen
Case No. 14-12160 (BLS)

Dear Ms. Pappoulis and Messrs. White and Wirth:

This letter constitutes the Court's rulings following a trial held on December 1, 2015. At trial, the Court heard the testimony of Mr. Pridgen (the "Debtor") and Mr. Wirth. The Court also admitted hundreds of pages of exhibits and considered the Motion for Summary Judgment [Docket No. 11]. For the reasons stated below, the Court will deny the request to revoke or deny Mr. Pridgen a discharge.

Mr. Pridgen filed his Chapter 7 petition on September 17, 2014, and George L. Miller was appointed the Chapter 7 Trustee. The Section 341 meeting was concluded on November 13, 2014, and the Chapter 7 Trustee's Report of No Distribution [Docket No. 17] was filed promptly thereafter. A discharge was entered (subject to this proceeding) on January 9, 2015 [Docket No. 28].

This adversary proceeding was filed on May 22, 2015 after substantial discovery conducted under Bankruptcy Rule 2004 [Docket No. 37, 44]. Mr. Floyd White has intervened in this proceeding as a co-plaintiff.

The record reflects that the Debtor operated a bail bonding business, T&H Bail Bond, Inc. ("T&H"), and Mr. Wirth agreed to lend money to finance the operation of that business. Mr. Pridgen personally guaranteed the corporation's obligations to Mr. Wirth. The testimony adduced at trial indicates that Mr. Wirth gave T&H a stack of *signed, blank checks* from his account, and Mr. Pridgen testified that those checks were used in the process of posting cash bonds.[1] Specifically, Mr. Pridgen testified that T&H personnel would fill out and deposit a check from Mr. Wirth in a separate account (often personal bank accounts), to obtain the certified checks required by the state courts for the posting of bonds.

In a nutshell, Mr. Wirth contends that Mr. Pridgen used funds that he loaned to T&H for improper personal uses. Mr. Wirth also alleges that Mr. Pridgen's schedules and other

[1] For the avoidance of doubt, the Court repeats: the business model developed by the parties was based on Mr. Wirth providing T&H with signed, blank checks on his account.

bankruptcy filings were deficient and inaccurate. The Adversary Complaint contains ten separate counts, asserting a claim of approximately $1.3 million and seeking denial of discharge under either § 523(a) or § 727(a) for failure to comply with the requirements of the Bankruptcy Code.

ANALYSIS

Case law teaches that discharge is to be broadly construed. *See, e.g.*, *In re Cohn*, 54 F.3d 1108 (3d Cir. 1995). Section 523 concerns a debtor's discharge and places the burden upon the objecting creditor to prove by a preponderance of the evidence that the elements of an exception to discharge have been met as to that specific creditor and claim, as a result of a debtor's pre-bankruptcy conduct. *Grogan v. Garner*, 498 U.S. 279, 287-88 (1991). Section 727, by contrast, provides that a debtor is entitled to a discharge unless one of eight conditions is met. The provisions of § 727(a) at issue here to go to a debtor's conduct during or in connection with the bankruptcy case.

A. Section 523(a)

Section 523(a)(2)(A) provides that a debt may be held non-dischargeable if it was obtained under "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." 11 U.S.C. § 523(a)(2)(A). The party seeking a determination of non-dischargeability must prove that:

1. The debtor made the misrepresentations or perpetuated fraud;
2. the debtor knew at the time that the representations were false;
3. the debtor made the misrepresentations with the intention and purpose of deceiving the creditor;
4. the creditor [justifiably] relied on such misrepresentations; and,
5. the creditor sustained loss and damages as a proximate result of the misrepresentations having been made.

In re Giarratano, 299 B.R. 328, 334 (Bankr. D. Del. 2003) (citing *Field v. Mans*, 516 U.S. 59, 70–71 (1995)), *aff'd*, 358 B.R. 106 (D. Del. 2004). Put another way, the false pretenses or representation must have occurred during the making of the guarantee agreement. Mr. Wirth has not made such allegations, nor are such facts present in the record, and therefore Mr. Wirth not met his burden under section 523(a)(2)(A).

Section 523(a)(4) provides that a debt may not be discharged if it was incurred through "fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." 11 U.S.C. § 523(a)(4). This claim also fails because no fiduciary relationship existed between Mr. Wirth and Mr. Pridgen, nor are there any allegations that would make out the elements of either embezzlement or larceny. Mr. Wirth served as a commercial lender to T&H, and the record reflects at most that funds were used in violation of the expectation of the parties in their lending agreement. The alleged breach and default may give rise to claims, but the record of the conduct does not rise to a level to preclude entry of a discharge for Mr. Pridgen under § 523(a).

Section 523(a)(6) operates to exclude from discharge claims arising from willful or malicious injury caused by a debtor. The typical (though admittedly not exclusive) context for invocation of § 523(a)(6) relates to claims or judgments for physical assault to a creditor or deliberate damage to a creditor's property. The allegations in the complaint and developed at trial clearly contend that Plaintiff's funds were used in a matter not anticipated, authorized or intended by Plaintiff, but there is nothing in the complaint or in the record to support a finding of willful or malicious conduct within the ambit of § 523(a)(6).

Based upon the foregoing, the Court will deny the Plaintiff's request that his claims against Mr. Pridgen be excepted from discharge under § 523(a).

B. Section 727(a)

As noted above, § 523(a) governs excepting a particular claim or claims from a debtor's general discharge. Section 727(a) creates a presumption that a debtor is entitled to a discharge, unless one of the listed conditions is met. These conditions consider a debtor's conduct in relation to the preparation and prosecution of a bankruptcy case.

Case law teaches that objections to discharge "are to be strictly construed against the creditor and in favor of the debtor." *Rosen v. Bezner*, 996 F.3d 1527, 1533 (3d Cir. 1993). Mr. Wirth therefore bears a heavy burden to defeat the Debtor's request for a discharge. Nevertheless, "a discharge in bankruptcy is a privilege – not a right – which must be earned." *In re Mezvinsky*, 265 B.R. 681, 690 (Bankr. E.D. Pa. 2001).

Mr. Wirth contends broadly in Counts III - VII and Count X of his Complaint that Mr. Pridgen deliberately concealed or transferred property in order to frustrate the rights of creditors and the orderly administration of his bankruptcy case. As discussed in greater detail below, Mr. Wirth alleges that the Debtor used the blank checks and his funds for improper purposes; he also alleges that Mr. Pridgen failed to disclose his interest in various corporate entities and other potentially valuable assets.

As a threshold matter, the Court observes that the Chapter 7 Trustee stands as the first line of defense against wrongful or improper conduct by a debtor. The Court attributes significant weight to the fact that the Chapter 7 Trustee in this case – a highly experienced and diligent professional – conducted and concluded his thorough investigation, consented to entry of the discharge and has not weighed in in support of the Plaintiff's request for denial or revocation of the discharge. While this circumstance is not dispositive of the challenge under § 727, it underscores the heavy burden Mr. Wirth must carry to prevail.

Turning to the record developed before the Court, a trial was held on December 2, 2015, at which time Messrs. Wirth and Pridgen testified at length and were subjected to extensive cross-examination. Additionally, as noted above, the Court admitted into evidence dozens of exhibits documenting the business relationship between Mr. Wirth and Mr. Pridgen.

Mr. Pridgen testified candidly and credibly at trial. He is an elderly gentleman, now retired from T&H. He was forthcoming and tried to the best of his memory to answer questions and provide explanations regarding his financial affairs.[2] [Tr. at pp. 23-24]

It is abundantly clear that Mr. Pridgen's record-keeping left much to be desired. He testified repeatedly that he is "computer-illiterate" [Tr. at pp. 28-29] and that he relied on his wife and a clerical worker at T&H to maintain the business records. ("In fact, they kept the records because I was trying to explain to you, I'm computer illiterate. I do not operate computers ... So I have no idea about what's going on on a computer."). [Tr. at p. 28]

It is true that certain assets or interests of Mr. Pridgen were not initially disclosed on his bankruptcy filings. However, the Court is satisfied with Mr. Pridgen's explanations and

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[2] Mr. Pridgen as a hostile witneess?
MR. WHITE: Your Honor, in order for this to move along at a more brisk pace, can I have permission to treat
THE COURT: Absolutely.
MR. WHITE: Okay. Thank you.
THE WITNESS: You said a hostile witness?. Huh?
THE COURT: Mr. Pridgen, that means he's allowed to walk you through and ask you yes and no questions, and treat you as if you're being cross-examined. If you have questions or you don't understand the questions that are being asked, you should ask me, and we'll make sure that you understand the questions.
THE WITNESS: Okay.
THE COURT: Okay? You may proceed.
THE WITNESS: Okay. But that don't mean I'm a hostile witness.
THE COURT: I understand.

testimony regarding his interests in various corporations [Tr. at pp 38-39], several race horses [Tr. at 40] and a boat [Tr. at pp. 88-90]. Similarly, while the testimony supports a finding that Mr. Wirth's funds were used at least in part for purposes other than cash bails, the record does not require a finding that Mr. Pridgen's guarantee obligations cannot be discharged.

The Court is sympathetic to Mr. Wirth's understandable frustration at the current state of affairs. He agreed to loan money to T&H to fund the business, and Mr. Pridgen guaranteed repayment of those loans. Mr. Pridgen retired from the business and has declared bankruptcy. However, while it is clear that Mr. Wirth has lost money on this investment, the record developed after full discovery and a trial does not support the request to deny Mr. Pridgen a discharge. Mr. Wirth presumably remains able to continue his efforts to recovery against T&H, the entity to which he loaned money in the first place.

Judgment on the Complaint shall be entered in favor of Defendant and against the Plaintiffs, with all parties to bear their own costs. Counsel for Defendant is requested to prepare and file under certification of counsel an Order and Judgment consistent with the Courts ruling within seven (7) days of the date hereof.

Very truly yours,

Brendan Linehan Shannon
Chief United States Bankruptcy Judge

BLS/jmw
cc: George L. Miller, Esquire