

11 U.S.C. § 727(a)(3)
Discharge

Lansdowne v. Deborah Cox

Civil No. 92-6213-HO
Adv. No. 685-6069
Bankr. Case No. 684-08497-H7

3/16/93 Dist. Ct. (Judge Hogan) affirming PSH unpublished

Bankruptcy court did not abuse its discretion in denying debtor's discharge for failing to maintain books and records pursuant to 11 U.S.C. § 727(a)(3). Under all the circumstances and considering the debtor's intelligence, education, experience in business matters, extent and involvement in the businesses, nature of her marital relationship, and duties imposed by state law, the debtor's reliance on her husband/co-debtor to keep books and records was not justified.

E93-2(11)

Entered
MAR 19 1993
U.S. DISTRICT COURT
DISTRICT OF OREGON
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

IN RE:

DEBORAH M. COX,

Debtor,

Civil No. 92-6213-HO
Adversary Proceeding 685-6069 W

DEBORAH M. COX,

Appellant,

vs.

PAUL LANDSDOWNE,
Trustee,

Appellee.

JUDGMENT

The bankruptcy court's final order of January 9, 1992, which denies debtor's discharge for failure to maintain books and records, is AFFIRMED.

Dated: March 19, 1993.

Donald M. Cinnamond, Clerk

by *Lea Force*
Lea Force, Deputy

JUDGMENT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re)	CV-92-6213-HO
)	
DEBORAH M. COX,)	Bankruptcy Court
)	Case No. 684-08497-W7
Debtor.)	
<hr/>		Adversary Proceeding
)	No. 685-6069 W
DEBORAH M. COX,)	
)	
Appellant,)	
)	
vs.)	O R D E R
)	
PAUL LANDSDOWNE, INC.,)	
Trustee,)	
)	
Appellee.)	

HOGAN, Judge:

The bankruptcy court's final order of January 9, 1992, which denies debtor's discharge for failure to maintain books and records, is AFFIRMED.

DATED this 16th day of March, 1993.

Michael R. Hogan
 MICHAEL R. HOGAN
 United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re)	CV-92-6213-HO
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DEBORAH M. COX,)	Bankruptcy Court
)	Case No. 684-08497-W7
Debtor.)	
_____)
)	Adversary Proceeding
)	No. 685-6069 W
DEBORAH M. COX,)	
)	
Appellant,)	
)	
vs.)	OPINION
)	
PAUL LANDSDOWNE, INC.,)	
Trustee,)	
)	
Appellee.)	

HOGAN, Judge:

Deborah Cox appeals from the bankruptcy court's final order denying her a discharge from debts for failure to maintain books and records. 11 U.S.C. § 727(a)(3). I affirm.

BACKGROUND

Stephen and Deborah Cox were married in 1973 and thereafter resided in or around Medford, Oregon. Deborah taught school until 1980. Stephen, an independent businessman,

(41)

1 provided the family's primary financial support. After 1980,
2 Stephen provided all of the family's financial support.

3 The Coxes enjoyed a comfortable lifestyle. In late 1980,
4 they moved to a new two-story contemporary home with three
5 bedrooms, two and one-half baths, a country kitchen, dining
6 room, living room, den, and two-car garage. They owned several
7 cars at various times, including an older Mercedes Benz and an
8 older Porsche. Deborah spent her time participating in
9 charitable and religious functions in the community. She also
10 played racquetball several times a week at the Medford Sports
11 Center.

12 Deborah did not know where the funds came from to
13 maintain this lifestyle. She knew her husband was involved in
14 at least six business enterprises. In fact, he was involved in
15 over a dozen enterprises, including several corporations and
16 partnerships. Through these businesses, Stephen engaged in
17 real estate investments, diamond and bullion trading, other
18 commodities trading, and factoring. The businesses also
19 operated restaurants, a jewelry store, and a gemological
20 laboratory.

21 During this period, Deborah signed numerous legal
22 documents related to the businesses Stephen was involved with.
23 Through them, she became a co-owner with Stephen of at least 14
24 parcels of real estate, a partner in at least two partnerships,
25 and an officer or director in at least four corporations.

26 / / /

1 Deborah did not participate actively in any of the
2 businesses. She did not discuss business matters with Stephen
3 other than incidentally in casual conversation, and did not
4 inquire into business transactions, including those involving
5 herself. She kept no books or records of any kind for any of
6 the businesses or property in which she had an interest.

7 In mid-September, 1984, Stephen told Deborah he was
8 concerned his businesses would be closed and he would be unable
9 to pay investors and other creditors. At this time, one of the
10 businesses was under investigation by the Oregon Corporation
11 Division for securities violations. After dark on September
12 24, 1984, the family left Medford in a rented truck, ostensibly
13 to get away from angry creditors. They remained in hiding in
14 California and Hawaii for the next several months.

15 On October 29, 1984, an involuntary bankruptcy proceeding
16 was filed against Deborah. In July, 1985, after learning that
17 the F.B.I. was about to seek a warrant for her arrest, Deborah
18 left Stephen and returned to Oregon to meet with government
19 agents and the trustee in bankruptcy.

20 The trustee filed an adversary action to deny Deborah's
21 discharge on the ground, inter alia, that she had failed to
22 maintain books and records as required by 11 U.S.C. §
23 727(a)(3). At trial, Deborah argued that her failure to keep
24 records was justified because she had relied on Stephen to run
25 the businesses, and because she had no knowledge or
26 understanding of the extent or ramifications of her actions nor

1 of bookkeeping practices. The bankruptcy court concluded that
2 Stephen and Deborah had a shared duty to keep records. The
3 court further concluded that Deborah's record keeping duty was
4 not delegable, and thus her failure to keep records was not
5 justified by her reliance on Stephen.

6 On appeal, the Ninth Circuit affirmed the bankruptcy's
7 court's finding that Stephen and Deborah had a shared duty to
8 maintain records. In re Cox, 904 F.2d 1399, 1402 (9th Cir.
9 1990). The Ninth Circuit reversed, however, on the relevance
10 of Deborah's reliance on Stephen. The case was remanded to the
11 bankruptcy court with direction that it consider all of the
12 circumstances -- including Deborah's purported reliance on
13 Stephen -- in determining whether her failure to keep records
14 was justified. Id. at 1403. The bankruptcy court again
15 concluded that Deborah's failure to keep records was not
16 justified and denied her discharge. Deborah appeals.

17 STANDARD OF REVIEW

18 In bankruptcy matters, the District Court acts as an
19 appellate court. The bankruptcy court's findings of fact are
20 generally reviewed under the clearly erroneous standard, and
21 its conclusions of law de novo. In re Daniels-Head &
22 Associates, 819 F.2d 914, 918 (9th Cir. 1987). Discharge
23 rulings are afforded somewhat greater deference. Discharge is
24 a matter generally left to the sound discretion of the
25 bankruptcy judge, whose determination is disturbed only if a
26 gross abuse of discretion is found. In re Cox, 904 F.2d at

1 1401.

2 DISCUSSION

3 11 U.S.C. § 727(a)(3) provides in relevant part that:

4 (a) The court shall grant the debtor a discharge,
5 unless --

6 (3) the debtor has . . . failed to keep or preserve
7 any recorded information, including books,
8 documents, records, and papers, from which the
9 debtor's financial condition or business
10 transactions might be ascertained, unless such . . .
11 failure to act was justified under all the
12 circumstances of the case.

13 In remanding this case, the Ninth Circuit directed the
14 bankruptcy court to consider the following six factors in
15 determining whether Deborah Cox's failure to maintain records
16 was justified under all of the circumstances: (1) Deborah's
17 intelligence and educational background; (2) her experience in
18 business matters; (3) the extent of her involvement in the Cox
19 businesses; (4) her reliance on Stephen to keep records,
20 including what, if anything, she saw or was told that indicated
21 Stephen was keeping records; (5) the nature of the marital
22 relationship; and (6) any record keeping or inquiry duties
23 imposed upon Deborah by state law. The Court also noted that
24 it is Deborah's burden to show that her failure to keep records
25 was justified under all the circumstances. 904 F.2d 1403, n.5.

26 1. Intelligence and Education

The bankruptcy court acknowledged that Deborah had no
bookkeeping, computer, or office equipment skills, nor the
skills necessary to deal with financial and business matters.

1 The court noted, however, that despite her lack of business
2 knowledge, Deborah had the educational and intellectual
3 capability to read the documents she signed, to determine the
4 extent of her assets and liabilities, and to make inquiries
5 concerning those items she did not understand. Deborah
6 received a Bachelor of Science degree and a Master's Degree in
7 Education from the Southern Oregon State College. She taught
8 school for several years, including several years of high
9 school social studies. In sum, the court below found, Deborah
10 was of above average intelligence and had been trained for some
11 skills but not for others.

12 2. Experience in Business Matters

13 Deborah had no experience in business matters. She
14 testified at trial that she was unfamiliar with the meaning of
15 several basic business and real estate terms.

16 3. Extent of Involvement in the Businesses

17 Deborah did not actively participate in the day-to-day
18 operation of the Cox businesses. Stephen managed them, and
19 also took care of all the major financial obligations of the
20 Cox household. During the "critical" period of 1980 to 1984,
21 Deborah did not inquire into the existence of, or look at, any
22 books or records of any of the Cox businesses. She signed the
23 various documents when she was asked to by her husband, usually
24 without reading them, in numerous locations, including
25 attorneys' and real estate offices. Among these were a number
26 of blank promissory notes.

1 4. Reliance on Her Husband to Keep Records

2 Deborah did not determine whether Stephen was executing
3 the legal responsibilities which arose from their business
4 transactions. She knew that he retained the services of
5 accountants and attorneys in the operation of the businesses,
6 but did not personally consult with them or ascertain whether
7 they were keeping records for the businesses. There was no
8 direct evidence presented that she relied on Stephen to
9 maintain records, but the bankruptcy court concluded that if
10 she had been aware of the need to maintain records, she would
11 have relied on Stephen to do so as part of her general reliance
12 on him in all financial matters.

13 5. Nature of the Marital Relationship

14 Stephen controlled finances, with regard to both the
15 businesses and the household. Deborah acquiesced in this
16 arrangement. She claims to have viewed her unquestioning
17 allegiance to Stephen as her marital duty. She had her own
18 bank account for household needs, and received money for it
19 periodically directly from Stephen by cash or check. She had
20 no idea how much money Stephen made, nor how much the family
21 house and car payments were. She did not open bills or bank
22 statements that arrived at the house, but merely set them aside
23 for Stephen.

24 Following their flight from Medford, Deborah decided to
25 return to Oregon from Hawaii only after she learned that the
26 FBI was about to issue a warrant for her arrest. She testified

1 that she generally avoided confrontation with her husband. As
2 the bankruptcy court noted, however, no evidence was presented
3 that would support a finding that Deborah so feared Stephen
4 that she was deterred from inquiring into business matters.
5 Nor has evidence been presented that he resisted such inquiries
6 or kept such matters secret from her.

7 Deborah's signature was forged on several business
8 documents, and the bankruptcy court found the evidence
9 indicated Stephen was probably responsible. The court also
10 found overwhelming evidence that Deborah signed, without
11 question, whatever Stephen asked her to sign. This led the
12 court to conclude that her signature was forged more for
13 convenience than to deceive her. The court noted that several
14 of the forgeries were of bank account signature cards.

15 6. Duties Imposed By State Law

16 Oregon law requires both partnerships, ORS 68.320, and
17 corporations, ORS 60.771, to keep records. Deborah was a
18 partner in both the SunVal Enterprises and Northwest Diamond
19 and Bullion partnerships. She was aware of her partner status
20 in Sun Val Enterprises. As a partner, Deborah personally kept
21 no records and failed to take steps to see that records were
22 kept by others.

23 Deborah was also an officer of at least two corporations,
24 B.C.S. Lounge, Inc. and S.D. Cox Investments, Inc. She was a
25 director of S.D. Cox Investments. Deborah neither kept records
26 nor took steps to see that records were kept by others on

1 behalf of these corporations.

2 The bankruptcy court reasoned that a reasonable person in
3 Deborah Cox's circumstances -- who repeatedly signed legal
4 documents over a period of several years -- would know that she
5 was initiating some form of legal responsibility for herself.
6 Such a reasonable person would also make some inquiry of a
7 knowledgeable person about the nature of her resulting legal
8 responsibilities, including that of keeping records. The court
9 further reasoned that such a person, after assuring herself
10 that her husband was carrying out the resulting
11 responsibilities, could have reasonably left the care of such
12 matters, to him. Yet here, the court noted, Deborah Cox never
13 inquired of anyone -- including her husband -- as to the extent
14 he was carrying out the responsibilities which arose from the
15 documents she signed. Rather than actively inquire into those
16 responsibilities, Deborah Cox chose to live behind what the
17 bankruptcy court characterized as a self-imposed curtain of
18 ignorance.

19 Deborah characterizes her actions as those of a loyal and
20 loving wife and mother who has been victimized by her husband.
21 In denying her discharge, Deborah suggests, the bankruptcy
22 court fell into the trap of blaming the victim. She emphasizes
23 her lack of business skills, her lack of practical involvement
24 in the businesses, and her total reliance upon her husband to
25 manage the businesses. Yet in suggesting it was unrealistic to
26 require her to independently maintain records, Deborah obscures

1 her own unreasonableness. As the bankruptcy court noted,
2 Deborah not only failed to keep records herself, but failed to
3 assure that anyone was executing the business responsibilities
4 she incurred through the various documents she signed at her
5 husband's request. She could not reasonably have believed that
6 no personal business responsibilities were incurred through
7 those actions.

8 Deborah cites three cases in support of her appeal.
9 Dixwell v. Scott & Co., 115 F.2d 873 (1st Cir. 1940); In re
10 Halpern, 387 F.2d 312 (2d Cir. 1968); and In re Pisano, 105
11 Bank. 125 (Bankr. S.D. Fla. 1989). Dixwell is cited for the
12 proposition that denying discharge for failure to keep records
13 is improper when the debtor lacks sufficient knowledge to keep
14 records herself. This case is distinguished from Dixwell by
15 the extensive legal involvement by the debtor in a series of
16 complex business transactions. In voluntarily becoming a
17 partner and a corporate officer and director, Deborah Cox
18 incurred legal responsibilities beyond those which bound the
19 debtor in Dixwell. Halpern is cited for the proposition that a
20 corporate officer debtor's failure to keep books can be excused
21 on the ground that she was not a truly responsible officer, but
22 rather merely an employee lacking substantial authority.
23 Halpern is distinguished by the fact that the corporation
24 involved there produced records that adequately reflected the
25 pertinent business transactions. 387 F.2d 315, 316. Pisano is
26 cited for the court's refusal to deny discharge for failure to

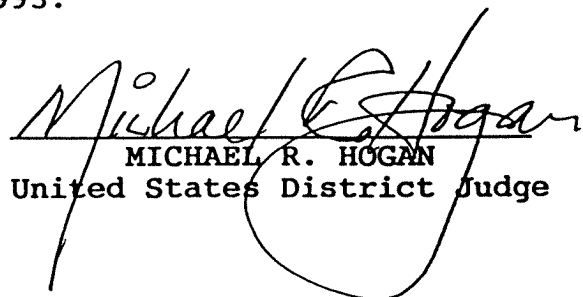
1 keep records where the debtor had relied on her deceased
2 husband for record keeping. That aspect of the Pisano
3 decision, however, was based on facts not present here.
4 Notably, a carton containing the elderly couple's records had
5 been lost by a moving company. 105 Bankr. at 127.

6 Having carefully reviewed the record in this matter, I
7 conclude the bankruptcy court neither abused its discretion nor
8 committed clear error in finding the debtor's failure to
9 maintain records was not justified under all of the
10 circumstances.

11 CONCLUSION

12 The bankruptcy court's final order denying debtor a
13 discharge from debts for failure to maintain books and records
14 is affirmed.

15 DATED this 16th day of March, 1993.

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18 MICHAEL R. HOGAN
19 United States District Judge
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