

In re Woodfield/Pearce

Emmet Valley Associates v. Woodfield, et al

Case No. 389-31007/31008-H7 Adv Pro No 89-3192

USDC # 94-110-JO 8-9-94 (EOD 8-15-94)

Affirming Bankruptcy Court (HLH)

These cases involved business partners and their wives. The 9th Circuit Court of Appeals had entered an opinion that was published at 978 F.2d 516 (9th Cir. 1992) that remanded a matter to the bankruptcy court for further consistent proceedings. The bankruptcy court interpreted the opinion to require the entry of judgments denying all the debtors' discharges and therefore did so.

The debtors appealed this ruling to the US District Court on the ground the 9th Circuit's opinion and remand did not require this result and that such a result was not legally appropriate. The US District Court agreed with the bankruptcy court's reading of the 9th Circuit's mandate and affirmed the bankruptcy court's judgments denying all the debtors' discharges.

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8-9-94
DONALD M. CINNAMOND
By [Signature] Deputy

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

BY [Signature]

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

AUG - 9 1994 ^{lod} 8/15/94

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERENCE H. DUNN, CLERK

BY [Signature] DEPUTY

In Re)
)
BLAIR B. WOODFIELD, MARIE Z.)
WOODFIELD, PARLEY A. PEARCE and)
DEANNA PEARCE,)
_____ Debtors.)
)
EMMETT VALLEY ASSOCIATES,)
)
Plaintiff,)
)
v.)
)
BLAIR B. WOODFIELD, MARIE Z.)
WOODFIELD, PARLEY A. PEARCE,)
DEANNA PEARCE and QUALITY FOODS,)
INC., an Oregon corporation,)
)
Defendants.)

Civil No. 94-110-JO
Bkcy Nos. 389-31007-H7
389-31008-H7
Adv. No. 89-3192

OPINION AND ORDER

Certified to be a true and correct
copy of original filed in my office.
Dated 8-11-94
Donald M. Cinnamon, Clerk
By [Signature] Deputy

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JONES, Judge:

The debtors/defendants in this case -- Blair and Marie Woodfield, and Parley and DeAnna Pearce -- appeal a final judgment of the bankruptcy court, which was entered following reversal and remand from the Ninth Circuit Court of Appeals. Defendants argue that the bankruptcy court erred in denying the discharges of Marie Woodfield and DeAnna Pearce. I find no error and affirm the bankruptcy court.

BACKGROUND AND FACTS

The background of this case is chronicled in detail in In re Woodfield, 978 F.2d 516 (9th Cir. 1992) ("Woodfield"). A brief synopsis follows:

Blair Woodfield and Parley Pearce were partners in the operation of two Wendy's fast-food restaurants in La Grande and Walla Walla. On March 10, 1989, the debtors filed for Chapter 7 bankruptcy. However, within 10 days of this date, debtors had formed a new corporation, Quality Foods, Inc. ("QFI"), in which they each held a 50 percent interest. They transferred the Wendy's franchising rights to the two restaurants to QFI, along with the equipment and fixtures valued at \$40,000 and inventory and supplies valued at \$11,000, and gave their creditors a "Notice of Bulk Transfer" pursuant to Oregon law. They received QFI stock in exchange for the transferred assets. In separate

transactions, Woodfield transferred \$10,000 in cash and Pearce transferred \$6,054 in cash to QFI; these transfers also occurred within 10 days of the debtors' bankruptcy filing.

At the creditors' meeting on April 25, 1989, the bankruptcy trustee filed a "no asset" report. Meanwhile, having secured a forbearance agreement from Wendy's International, Inc., the debtors continued to operate the two restaurants. On July 15, 1989, Pearce and Woodfield agreed to dissolve QFI, Inc.; Woodfield became the sole owner of the Walla Walla Wendy's, while Pearce took over the La Grande Wendy's. The property division agreement signed July 15, which set out the terms of the restaurant allocation, begins:

1. Parley A. Pearce and Blair B. Woodfield formerly did business together as the "Pearce-Woodfield Partnership," including operation as franchise-owners of two Wendy's fast-food restaurants, one located in Walla, Washington, and one located in LaGrande, Oregon. Their respective spouses, DeAnna Pearce and Marie Z. Woodfield, may also have a marital property interest in the partnership or some assets related to the restaurant operations. The partnership was dissolved by mutual agreement of March 1, 1989, creating an individual fifty percent ownership interest in the assets by each partner.

(Emphasis added.) Later on in the agreement, "hold harmless" language refers to Marie Woodfield and DeAnna Pearce ("the wives.") All four debtors signed the agreement.

On June 26, 1989, Emmett Valley Associates ("EVA"), an unsecured creditor, objected to the debtors' discharge, alleging that debtors had fraudulently misrepresented the true value of their assets and had transferred the operation of the two Wendy's to a new corporation in recognition of a value in the franchises

in excess of the value they had disclosed. Plaintiff subsequently moved to turn over certain of the debtors' properties and for the voidance of the transfers to QFI.

In August, 1989 the trustee moved to abandon the assets of the two Wendy's. The abandonment was approved after trial before the bankruptcy court, which issued an opinion prepared by the debtors' lawyers. Plaintiff appealed to the district court, which affirmed the judgment of the bankruptcy court. Plaintiff appealed to the Ninth Circuit, which reversed and remanded in Woodfield.

THE NINTH CIRCUIT MANDATE

To deny a discharge under 11 U.S.C. 727(a)(2),¹ the court must find that the debtors had actual intent to hinder, delay or defraud a creditor or officer of the estate. Woodfield, 978 F.2d at 518. Whether or not this intent exists is a finding of fact reviewable for clear error. Id. The court may infer the intent from circumstances surrounding the transaction. Id.

In denying the debtors discharge in bankruptcy, the Ninth Circuit found that the district court, affirming the bankruptcy court, clearly erred as to the debtors' intent to hinder, delay or defraud their creditors by transferring the cash to QFI.

¹(a)The court shall grant the debtor a discharge, unless-- (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated or concealed--(A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition[.]

Certain "badges of fraud" strongly suggest that a transaction's purpose is to defraud creditors unless some other convincing explanation appears. . . The transaction here carried many of these badges. The relationship between the Debtors and the corporation could not have been closer; the Debtors created and operated the transferee corporation. The transfer was admittedly made in anticipation of the bankruptcy filing. The partnership was admittedly in poor financial condition at the time, having defaulted on several obligations. Substantially all of the partnership's property relating to the Wendy's franchise was transferred, leaving nothing to satisfy any judgments; hence the trustee abandoned claims on the estate.

Woodfield, 978 F.2d at 519.

The appeals court found that "more than a dry checklist of badges of fraud" demonstrated the debtors' intent. Among other actions, the debtors tried to delay or prevent seizure of the assets; they omitted the transfers from their statement of affairs in bankruptcy; and they performed a second transfer, in which the QFI stock, which supposedly replaced the \$17,000 in the estate, was rendered worthless. Id.

The appeals court further found that while Woodfield and Pearce contend that the cash was transferred to pay wages that they owed, they in fact admitted that the funds were used for many purposes other than paying wages. Woodfield said that after the transfer the account containing the \$10,000 paid for advertising, a philanthropic donation, food, utilities, office supplies and storage rental. Pearce admitted that portions of the \$6,954 which was in the partnership account when it was turned over to QFI were used to pay non-payroll items.

All of this suggests that a random amount of cash, unconnected to the amount expected to be paid out in

back wages, was put into a general-purpose account and used for general purposes, and no attempt was made to ensure that the cash was used only for wage claims. The bankruptcy court clearly erred in holding that the cash transfers were necessary to pay wages. The bankruptcy court clearly erred in holding that the Debtors' intent was not fraudulent. The district court clearly erred in affirming the bankruptcy court on these points. The Debtors intended to put the cash beyond the creditors' reach. . .The Debtors transferred property with intent to hinder, delay or defraud creditors. Their discharge must be denied pursuant to 11 U.S.C. § 727(a)(2).

The appeals court reversed the district court and remanded for proceedings consistent with the appellate opinion.

DISCUSSION

Defendants point to isolated sentences in the Ninth Circuit opinion to support their theory that the Ninth Circuit mandate applies only to Blair Woodfield and Parley Pearce. However, when read as a whole, the only logical interpretation is that the denial of discharge applies to all debtors, particularly in light of the holding quoted above.

This interpretation of the opinion is buttressed by the fact that defendants sought review of the appeals court's opinion on this specific issue. In their petition for review, defendants argued that the opinion

overlooks a material issue of fact and law by failing to distinguish between debtors Mr. Pearce and Mr. Woodfield and their respective spouses in denying discharge. The record contains no evidence that Deanna Pearce and Marie Woodfield were partners in the business operations or that they materially participated in the subject transfers.

The petition for review was denied.

Defendants further argue that plaintiff EVA presented no evidence that the wives participated in any conduct the Ninth Circuit found fraudulent and that plaintiff did not carry its burden of proving by a preponderance of evidence that the wives violated any provision of the bankruptcy code. Because there was insufficient evidence in the record, the bankruptcy court erred in denying the wives' discharge, defendants argue.

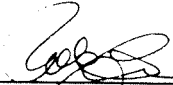
However, as plaintiff notes, the Ninth Circuit found that fraudulent intent may be inferred from the circumstances surrounding a transaction. First of all, the wives signed the property division agreement which dissolved QFI, the vehicle set up to receive transfers which were found fraudulent by the Ninth Circuit. Secondly, personal and household expenses were paid with transferred cash; the wives benefitted from and failed to disclose they were continuing to derive the equitable benefits of transferred assets.

Plaintiff asserts that the Ninth Circuit drew the conclusion that the wives intended to hinder, delay and defraud creditors by their specific acts and course of conduct, and that the bankruptcy court correctly interpreted the Ninth Circuit's mandate in denying discharges in bankruptcy to all four debtors. I agree.

CONCLUSION

The judgment of the bankruptcy court is AFFIRMED.

DATED this 4th day of August, 1994.



ROBERT E. JONES
United States District Judge