

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
PATRICK & NANCY LASHLEY,) CASE NO. BK99-80515
) A99-8058
)
DEBTOR(S).)
_____) CH. 7
BILLY J. KRAMER,)
Plaintiff(s),)
vs.)
)
PATRICK & NANCY LASHLEY,)
Defendant(s).)

MEMORANDUM

Hearing was held on August 29, 2000, on the adversary complaint. Appearances: Steven Vinton for the debtors and James Schneider for the plaintiff. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I).

Introduction

This adversary proceeding was brought by plaintiff, Billy J. Kramer, to obtain a determination that a judgment entered in favor of Mr. Kramer and against Patrick A. Lashley, one of the debtors, is nondischargeable under 11 U.S.C. § 523(a)(6). That section provides that a debt for "willful" and "malicious" injury by the debtor to another entity or to the property of another entity shall not be discharged 11 U.S.C. § 523(a)(6). In this case, the property which is the subject matter of the dispute is the right of Mr. Kramer to receive the benefits of the Nebraska Workers' Compensation Law.

Facts

1. On November 23, 1994, Mr. Kramer was employed by Mr. Lashley and while so employed during the scope and course of his employment with Mr. Lashley, Mr. Kramer suffered injuries.

2. At no time during the employment of Mr. Kramer by Mr. Lashley did Mr. Lashley procure applicable workers'

compensation insurance, nor did he qualify as a self-insurer as required by Nebraska law.

3. Mr. Kramer filed an action in the Nebraska Workers' Compensation Court against Mr. Lashley and was awarded a judgment for medical expenses resulting from his physical injury, in the approximate amount of \$42,000.

4. Since Mr. Lashley had not obtained workers' compensation insurance coverage, there were no insurance proceeds available to satisfy the judgment. When Mr. Kramer attempted collection efforts from Mr. Lashley, after the workers' compensation judgment was affirmed by the Nebraska Court of Appeals, Mr. and Mrs. Lashley filed a joint Chapter 7 bankruptcy petition.

5. At the time of the physical injury suffered by Mr. Kramer, Mr. Lashley was a sole proprietor engaged in the business of purchasing trees, sawing the trees into certain lengths of wood planks, and selling the wood planks to other commercial enterprises for further processing. Mr. Kramer was injured while employed cutting down a tree for Mr. Lashley's business.

6. Although a minimal amount of evidence has been presented that Mrs. Lashley claimed some ownership interest in some or all of the equipment used by Mr. Lashley's business, there is no evidence that Mrs. Lashley claimed to be or actually was an owner of the business itself. She, therefore, has no personal responsibility for the failure of the business to obtain workers' compensation insurance and she has no liability to Mr. Kramer, either under the judgment entered against Mr. Lashley in the workers' compensation court, or otherwise. Judgment will be entered in favor of Mrs. Lashley and against the plaintiff.

7. Mr. Lashley had been in business for several years prior to the injury to Mr. Kramer. Although he had a number of other employees, he obtained and provided no workers' compensation coverage for any of them. In Mr. Kramer's case, although it is possible that Mr. Kramer's employment, initially, could fall under the general description of an "independent contractor" for which Mr. Lashley would not have a workers' compensation insurance obligation, Mr. Kramer's employment status changed shortly after beginning employment. Mr. Lashley provided Mr. Kramer with all of the tools and

equipment necessary to perform the job. He directed Mr. Kramer to the various locations where Mr. Lashley had purchased trees from landowners. He conversed with Mr. Kramer about the fact that he, Mr. Lashley, did not have workers' compensation insurance.

8. Mr. Lashley, who has claimed throughout this case that he was unaware that he needed to obtain workers' compensation insurance, was in the insurance sales business prior to being in the wood business. He claims absolute ignorance about the purpose of or need for workers' compensation or any requirements concerning such insurance. He testified under oath that he had never discussed the need for workers' compensation insurance with any accountant, bookkeeper, lawyer, or even the insurance agent that sold him other types of business insurance. He asserts that he was informed by other people in the wood business that he could employ the services of individuals, and, as long as he called them independent contractors, he was not responsible for workers' compensation insurance.

9. His testimony is inconsistent and unbelievable. He had been in business several years before Mr. Kramer's injury. He had purchased business insurance, both on his vehicle and equipment. He was aware of health insurance obligations. He had talked to, received advice from, and relied upon statements of others in the wood business concerning his workers' compensation insurance obligations. At the time of Mr. Kramer's injury, Mr. Lashley was not totally ignorant of or innocent about either the existence of workers' compensation insurance or the fact that the business in which he engaged, and in which he employed the services of others, was a risky and dangerous business and one in which it was not unlikely that a worker could be seriously injured.

10. Mr. Lashley did not obtain workers' compensation insurance because he had heard from others in the wood business that it was too expensive. He did not even do research in an attempt to find out the actual cost of the insurance, but simply declined the opportunity and ignored the obligation to obtain such insurance.

11. Mr. Lashley's willful and intentional refusal to obtain workers' compensation coverage for Mr. Kramer, is a willful act as the term "willful" is defined by the case law interpreting 11 U.S.C. § 523(a)(6).

12. Mr. Lashley knew, prior to the time of the injury to Mr. Kramer, that if Mr. Kramer were injured on the job, Mr. Lashley had neither workers' compensation insurance nor the financial capability to compensate Mr. Kramer, as a self-insured employer, as is required under the Nebraska Workers' Compensation Statutes.

13. Mr. Lashley knew that if Mr. Kramer were injured on the job, he would not receive the benefits of the workers' compensation scheme provided by the Nebraska legislature.

14. Mr. Lashley's willful refusal to obtain workers' compensation insurance injured Mr. Kramer's statutory right to insurance protection for monetary loss due to injuries suffered at work. This refusal to obtain workers' compensation insurance is "malicious," as that term is used in 11 U.S.C. § 523(a)(6), because it was targeted at Mr. Kramer, at least in the sense that the conduct was certain or almost certain to cause Mr. Kramer financial harm.

Conclusions of Law

1. The Nebraska Workers' Compensation Act, Neb. Rev. Stat. § 48-145 et sec., requires an employer to either, 1) obtain workers' compensation insurance or, 2) provide proof of the employer's financial ability to pay compensation in the amount and manner when due as provided by the Nebraska Act.

2. Section 48-145.01 of the Nebraska Workers' Compensation Act provides that failure to secure the payment of compensation under the Act is a Class I misdemeanor.

3. Failure to obtain workers' compensation insurance can result in a nondischargeable debt under 11 U.S.C. Section 523(a)(6), depending upon the facts of the case. See Strauss v. Zielinski (In re Strauss), 99 B.R. 396, (N.D. Ill. 1989). The Strauss court found that the employer's failure to obtain workers compensation insurance injured the employee's "statutory right of workman's compensation" and, therefore, the injury to be considered in the context of the dischargeability action was the injury to the employee's statutory right to insurance protection for monetary loss due to injury suffered at work. On appeal, the district judge in the Strauss case stated that the debtor's employer may have been found to have acted "maliciously" if it was foreseeable that an employee could be injured and the failure to obtain

worker's compensation would injure the employee's statutory right to insurance benefits. The judge found that such a determination is particularly apt depending upon the hazards of the business being engaged in by the employer.

4. In Geiger v. Kawaauhau, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed. 2d 906 (1998), the Supreme Court of the United States determined that, in order to be successful in a claim under Section 523(a)(6), the plaintiff must show that the debtor intended the act and that the debtor knew that the consequence of the act would be injury to another or the property of another. The Eighth Circuit case of In re Long, 774 F.2d 875, 880-81 (8th Cir. 1985) defined malicious conduct as that type of conduct targeted at the creditor, at least in the sense that the conduct is certain or almost certain to cause financial harm. As determined above, as a fact, Mr. Lashley knew that failure to obtain workers' compensation insurance, or to be financially stable enough to pay the compensation provided by the statute, would cause Mr. Kramer financial harm if Mr. Kramer became injured on the job.

Conclusion

The obligation owed to Mr. Kramer by Mr. Lashley, as represented by the workers' compensation judgment and interest accruing thereon, is nondischargeable under 11 U.S.C. § 523(a)(6) as a debt resulting from a willful and malicious injury to property of Mr. Kramer, that property being his statutory right to workers' compensation.

Separate judgment to be entered.

DATED: October 16, 2000.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

Steven Vinton 308-537-7162

Copies mailed by the Court to:

James Schneider, P.O. Box 983, North Platte, NE 69103
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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JUDGMENT

1. Judgment is entered in favor of the plaintiff and against the defendant, Patrick A. Lashley. The debt represented by the judgment and accruing interest awarded by the Nebraska Workers' Compensation Court is nondischargeable under 11 U.S.C. § 523(a)(6).

2. Judgment is entered in favor of defendant, Nancy J. Lashley, and against plaintiff, Billy J. Kramer. The obligation, if any, represented by the judgment of the Nebraska Workers' Compensation Court in favor of Mr. Kramer and against Mr. Lashley, or any other obligation representing a debt of Nancy J. Lashley to Billy J. Kramer is discharged in this bankruptcy case.

See Memorandum entered this date.

DATED: October 16, 2000

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

VINTON, STEVEN 308-537-7162

Copies mailed by the Court to:

James Schneider, P.O. Box 983, North Platte, NE
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