

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
MYRON & NANCY JONES,) CASE NO. BK87-111
)
DEBTORS) A87-158
)
GENERAL SERVICE BUREAU, INC.)
assignee of Nebraska Methodist)
Hospital)
)
Plaintiff)
)
vs.)
)
MYRON & NANCY JONES,)
)
Defendant)

MEMORANDUM OPINION

A hearing on the Complaint to determine dischargeability of debt was heard on February 5, 1988. Appearing on behalf of the plaintiff was Craig McDermott of Moore & Boler, P.C., Omaha, Nebraska. Appearing on behalf of the defendants was Robert Wester of Papillion, Nebraska.

Debtor Myron Jones incurred medical and surgical expenses at Nebraska Methodist Hospital, prepetition. Mr. Jones executed an assignment of the proceeds of his medical insurance benefits to the hospital, prior to service being rendered. His spouse, Nancy Jones, also a debtor, was the named insured of the medical benefits policy through her employer and Mr. Jones was covered as a member of the family.

The hospital provided the services and submitted itemized bills to the insurance company. The insurance company sent a check for the coverage to Mrs. Jones, with the check payable only to her.

She cashed the check and spent the money for living expenses while Mr. Jones was recuperating.

Mr. Jones and Mrs. Jones were having marital problems at the time and she did not tell him of her receipt of the funds or her disposition of the funds. The hospital contacted Mr. Jones for payment information. He inquired of his spouse and she denied receipt of the funds.

Eventually the hospital assigned the account to the plaintiff which attempted collection. Mr. and Mrs. Jones filed bankruptcy under Chapter 7 and plaintiff filed a complaint objecting to the dischargeability of the debt under 11 U.S.C. Section 523(a)(4) and 523(a)(6).

Conclusions of Law and Discussion

The Bankruptcy Code excepts debts from discharge under Section 523(a)(4) for fraud or defalcation in a fiduciary capacity, embezzlement or larceny. Under Section 523(a)(6) debts are not discharged if they are a result of willful and malicious injury to property of another caused by debtor.

In this case the hospital obtained the signature of the patient, but did not obtain an assignment of benefits from the insured, Mr. Jones. The Court believes that Mr. Jones did not receive the check or have any control over it or knowledge of its disposition. He, therefore, did not convert the check, injure the property interest of the creditor or breach a fiduciary duty or commit fraud. To the extent the proceeds were used for his benefit, he had no knowledge of it, and should not be denied a discharge because of such benefit. He did nothing knowingly, maliciously or willfully to harm the interest of the creditor. He appeared truly embarrassed and concerned that he was in this predicament solely because of actions by his spouse.

As for Mrs. Jones, she will not be denied a discharge of this debt either. The Court is not convinced she even owes a debt. She had no contract with the hospital. The hospital provided services, not to her, but to her spouse and did not obtain either her consent or an assignment of benefits from her.

The hospital has no special claim to the check. Its official did not expect a check directly from the insurance company. Apparently what was expected was that a check would be sent to Mr. Jones, he would either endorse it to the hospital, or cash it and write his own check to pay the bill. None of that happened.

Mrs. Jones had no fiduciary relationship to the hospital. She had no contract with the hospital. The hospital had no claim to the check, nor, as between Mrs. Jones and the hospital, did it have a right to demand payment from her.

She did not injure property of the hospital by cashing the check and spending the proceeds. The hospital, with no assignment by her or any other lien or claim to the funds, had no interest in the specific funds.

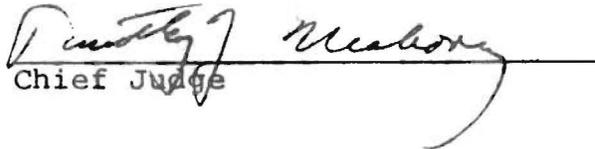
The hospital, pre-bankruptcy and post bankruptcy, was an unsecured, general creditor of the debtors.

They did not violate Section 523(a)(4) or (a)(6).

Judgment for defendants. Discharges granted. Separate Journal Entry to issue.

DATED: February 29, 1988.

BY THE COURT:


Chief Judge

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