United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
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Lyle W. Cayce
Clerk

No. 23-50163

In the Matter of Alexandra C. Shurley; Clayton T. Shurley,

Debtors,

Moody National Bank,

Appellant,

versus

Alexandra C. Shurley; Clayton T. Shurley,

Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CV-1120

Before Higginbotham, Stewart, and Southwick, *Circuit Judges*.

Per Curiam:[*]

[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

Creditor-Appellant Moody National Bank ("Moody") initiated an adversarial proceeding against Debtors-Appellees Alexandra Shurley ("Mrs. Shurley") and Clayton Shurley ("Mr. Shurley") (collectively, the "Shurleys") in their Chapter 7 case. Moody argued that the Shurleys' debts were not dischargeable under various subsections of 11 U.S.C. § 523(a). The bankruptcy court disagreed and determined that the debts were dischargeable. On appeal, the district court affirmed. For the reasons that follow, we also AFFIRM.

I.

The Shurleys owned Shurley Brothers, LLC ("Shurley Brothers"), a custom wood-working company, from 2006 to 2017. The Shurleys founded the company in Arkansas in 2006 and moved their operations to Austin, Texas in 2013. Shurley Brothers acquired expensive wood-working equipment valued at around one million dollars, either on credit or through lease with an option to purchase, to further grow its output. The company's gross income grew year over year between 2013 and 2015. In 2016, its balance sheet reported a sales generated-income greater than $639,000, a payroll greater than $200,000, and a net income after expenses nearing $165,000.

To continue this growth and provide more cash flow for operations, the Shurleys sought to restructure the company's existing debt in early 2017. One of the clients of Shurley Brothers referred Mr. Shurley to Jeff Hutchens ("Hutchens"), a loan officer at Moody, for this purpose. From April to September 2017, Mr. Shurley and Hutchens worked together to determine whether Shurley Brothers could qualify for a loan. Moody required Shurley Brothers to move its deposit account to Moody for monitoring during the loan underwriting investigation.

After completing its investigation, Moody denied the Shurleys' first three applications.[1] After Moody denied the Shurleys' third application on September 7, 2017, Mr. Shurley told Hutchens that he needed assistance to make payroll. Hutchens suggested that the Shurleys take out a receivables loan to make ends meet. That same day, Mr. Shurley took out a $50,000 loan from Colonial Funding ("Colonial") through an online platform. Mr. Shurley believed that the Colonial loan was only secured by the company's receivables, but Colonial filed a UCC-1 form indicating a blanket lien on all of the company's property on September 7, 2017. Continuing its investigation, Moody requested another UCC Search Report on September 8, 2017. However, the report had an effective date of August 31, 2017, so it did not show the Colonial lien filed the day prior.

On September 28, 2017, the Shurleys again applied for a loan from Moody in the presence of Hutchens and another Moody employee. Neither Hutchens nor the other Moody employee explained the terms of the documents that the Shurleys executed that day. Instead, Hutchens and the other employee merely examined whether the Shurleys included their address, signatures, and social security numbers on the documents. The amended commitment letters the Shurleys signed stated that "[n]o liens or security interests shall be permitted against the Subject Property other than in favor of" Moody. Moody then approved the Shurleys for two loans totaling $500,000. Moody did not run an updated UCC search after the September 7, 2017 loan application denial and conversation advising Mr. Shurley to apply for a receivables loan to make payroll. The Shurleys made one delinquent payment before defaulting on the loans. Hutchens then went to the company's facility after they defaulted, only to find that its landlord had

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[1] The Shurleys signed three commitment letters from June 2017 to September 2017.

locked the premises. The company's valuable wood-working equipment was also missing.

II.

The Shurleys filed for bankruptcy on September 7, 2019. On December 9, 2019, Moody instituted an adversarial proceeding against the Shurleys to exempt its claim from discharge. The bankruptcy court found that the debts owed to Moody were not exempt from discharge under any subsection of 11 U.S.C. § 523(a) because (1) Moody failed to prove it reasonably or justifiably relied on the Shurleys' written misrepresentations; (2) Moody failed to prove that the Shurleys acted with intent to deceive; (3) the Shurleys' failure to inform Moody of Colonial's lien was exempt from § 523(a)(2)(A) as a "statement respecting the debtor's or an insider's financial condition"; and (4) Moody failed to prove that the Shurleys willfully and maliciously injured Moody.[2] Moody timely appealed.

The district court affirmed the bankruptcy court's order. The district court applied a clear error standard of review to the bankruptcy court's determinations that (1) minimal investigation would have revealed Colonial's blanket lien; (2) Moody failed to prove reasonable or justifiable reliance; (3) Moody failed to prove that the Shurleys acted with the intent to deceive; and (4) there was no evidence that the Shurleys possessed "an objective substantial certainty of harm or subjective motivation to cause harm." *Moody Nat'l Bank v. Shurley*, No. 1:21-CV-1120-DAE, 2023 WL 2368023, at *3–9 (W.D. Tex. Feb. 1, 2023). According to the district court, the bankruptcy court appropriately held that Moody did not reasonably or justifiably rely on the Shurleys' misrepresentations because (1) no prior business relationship

[2] Moody alleged that the debt was exempted from discharge under § 523(a)(2)(A), (a)(2)(B), (a)(6).

existed for the debtors to exploit; (2) minimal investigation in the form of an updated UCC search after the first three loan denials would have uncovered Colonial's blanket lien; and (3) several red flags existed that would have alerted a prudent lender to the misrepresentations.[3] *See also Matter of Osborne*, 951 F.3d 691, 700–02 (5th Cir. 2020). The district court further held that Moody "failed to show the requisite intent to deceive." *Shurley*, 2023 WL 2368023, at *8. It reasoned that based on the totality of the circumstances, Moody did not demonstrate that the Shurleys, as unsophisticated debtors that subjectively believed their pre-existing obligation to Colonial did not conflict with the terms of the commitment letters, signed the September 28, 2017 commitment letter with "reckless disregard for the truth or falsity of" their statements. *Id.* at *6.[4]

The district court further held that the "magnitude of the misrepresentation about the Colonial Funding lien does not support an intent to deceive" because the value of the company's collateral far exceeded its debt obligations. *Id.* at *7. The court agreed with the bankruptcy court's assertion that Moody failed to prove justifiable reliance under § 523(a)(2)(A) because "Mr. Hutchens' suggestion to Mr. Shurley that he get a receivables loan to cover payroll on September 7, 2017, coupled with his demonstrated monitoring of the Shurley accounts on at least one other occasion, present[ed] serious red flags" that would have alerted Moody to the misrepresentation. *Id.* at *8. Thus, the district court determined that it could

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[3] *Id.* at *4 (no prior business relationship); *id.* at *5 (declaring that the bankruptcy court's determination that numerous red flags existed to alert Moody to the misrepresentation was plausible under the totality of the circumstances); *id.* at *5–6 (holding that bankruptcy court's determination that minimal investigation would have revealed the misrepresentation was plausible on the record).

[4] The district court further credited the bankruptcy court's credibility determinations made based on Mr. Shurley's testimony. *Id.*

find no clear error in the bankruptcy court's order, and that "the debts owed by the Shurleys to Moody" were dischargeable. *Id.* at *9.

On appeal, Moody argues, *inter alia*, that the bankruptcy and district courts erred by: (1) applying a heightened standard for creditors to prove reasonable and justifiable reliance; (2) determining that the Shurleys' failure to inform Moody of Colonial's lien were statements respecting the Shurleys' financial condition not subject to § 523(a)(2)(A); and (3) holding that the Shurleys did not maliciously injure Moody under § 523(a)(6).

III.

"We review the decision of the district court by applying the same standards of review to the bankruptcy court's findings of fact and conclusions of law as applied by the district court." *In re O'Connor*, 258 F.3d 392, 397 (5th Cir. 2001) (internal quotation omitted). We review findings of fact for clear error and conclusions of law de novo. FED. R. BANKR. P. 8013; *Phoenix Expl., Inc. v. Yaquinto*, 15 F.3d 60, 62 (5th Cir. 1994).

IV.

Moody contends that the bankruptcy and district courts erred by determining that the Shurleys' deceptive silence qualified as a statement respecting their financial condition under *Lamar, Archer & Cofrin, LLP v. Appling*, 123 S. Ct. 1752 (2018). The bankruptcy and district courts noted that the Supreme Court "expanded the breadth of a 'statement' under § 523(a)(2)(A)" in *Appling* to incorporate misstatements like the Shurleys' incorrect statement that they had "no other encumbrances on their collateral." *See Shurley*, 2023 WL 2368023, at *7. Additionally, the district court held that Moody failed to show that the Shurleys had the requisite intent to deceive and that it justifiably relied on the Shurleys' misstatements. We agree with the district court's determination that Moody failed to satisfy several elements of § 523(a)(2)(A) to entitle its debts to an exception to

discharge. *See id.* at *7–9 (determining that § 523(a)(2)(A) is inapplicable to the Shurleys' misstatements, that no evidence supported a finding that the Shurleys intended to deceive Moody, and that Moody failed to prove justifiable reliance because several red flags existed).[5]

Moody further argues that the district court erred in rejecting its § 523(a)(2)(B) claim because it established reasonable reliance and that the Shurleys intended to deceive Moody. The district court held that Moody did not prove reasonable reliance because multiple red flags existed that would alert a prudent lender to the misstatements made by the Shurleys and minimal investigation would have revealed the misstatements. *Shurley*, 2023 WL 2368023, at *4–6. We hold that the district court appropriately denied Moody's § 523(a)(2)(B) claim because Moody did not reasonably rely on the misstatements due to the existence of several red flags that would alert a prudent lender to the misstatements and that there was little evidence that the Shurleys intended to deceive Moody. *See id.*; *Matter of Osborne*, 951 F.3d at 702.

Lastly, Moody argues that the district court erred in denying its § 523(a)(6) claim because the Shurleys inflicted a "willful and malicious injury" on Moody by making misstatements in their loan application with an "objective substantial certainty" that Moody would be harmed by those misstatements. The district court stated that a "willful injury, in this context, is a 'deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury.'" *Shurley*, 2023 WL 2368023, at *9 (quoting *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998)). The district court concluded that "Section

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[5] *See also Matter of Allison*, 960 F.3d 481, 483 (5th Cir. 1992) (determining that the intent to deceive under § 523(a)(2)(A), (B) involves "moral turpitude or intentional wrong; fraud implied in law which may exist without imputation of bad faith or immorality is insufficient").

523(a)(6) did not exempt the Shurleys' debt from discharge" because Mr. Shurley genuinely believed that the loans from Moody and Colonial would not conflict and "the Shurleys [had] more than enough collateral to cover any loss or damage suffered by their insolvency." *Id.* This court holds that the district court properly rejected Moody's arguments as to its § 523(a)(6) claim because the evidence does not demonstrate that the Shurleys acted with "an objective substantial certainty" that Moody would be harmed by their misstatements.

V.

For the foregoing reasons, we AFFIRM the judgment of the district court.