UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2551

IN THE MATTER OF: FRANK L. PRYOR,

Debtor,

versus

CHROMATIC COLOR CORP.,

Appellee,

FRANK L. PRYOR,

Appellant.

Appeal from the United States District Court
for the Southern District of Texas
CA H 88 2375

April 29, 1993

Before POLITZ, Chief Judge, and GOLDBERG and JONES, Circuit Judges.[*]

EDITH H. JONES, Circuit Judge:

Appellant Frank L. Pryor, Jr. appeals the decisions of the bankruptcy and district courts partially denying discharge of a debt that Pryor had guaranteed. We affirm.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

Pryor was a fifty-percent shareholder of Universal Printing Ink Corporation (UPIC) and was active in its management from 1957 until 1980, when he temporarily retired. After Pryor's retirement, UPIC fell on hard times, and in 1984 Pryor came out of retirement to take control of the business. By 1985 UPIC was approximately $190,000 in arrears to Chromatic Color Corporation on past-due open account invoices. This outstanding debt was consolidated into a promissory note, which Pryor personally guaranteed, and installments were successfully paid over the course of the next year.

In 1986 UPIC fell behind on its open account payments and again sought to consolidate its debt into a second promissory note. Before agreeing to the consolidation with Pryor's guarantee, Chromatic required Pryor to produce a personal financial statement. On June 26, 1986, Pryor signed and delivered to Chromatic a financial statement purporting to represent Pryor's financial condition as of December 20, 1985.[1] On July 2, 1986, debt totalling $169,857.95 was consolidated into a second promissory note and was personally guaranteed by Pryor.

After accepting UPIC's second promissory note and Pryor's guarantee, Chromatic held back on collection attempts and, for a few months, continued to provide goods to UPIC on open account.

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[1] Pryor's financial statement indicated a net worth of almost $5 million. In reality, Pryor was insolvent at the time he presented the financial statement to Chromatic.

Shortly thereafter, however, UPIC went out of business and Pryor declared bankruptcy.

Chromatic filed a complaint in Pryor's bankruptcy proceeding requesting the bankruptcy court to except from discharge all or part of the UPIC debt that Pryor had guaranteed because it had been induced by Pryor's fraudulent financial statement to forbear on collection attempts and to extend further credit to UPIC. The Bankruptcy Court granted a portion of the requested relief, denying the discharge as to $81,611.15 of the debt owed to Chromatic, and the district court affirmed.

II.

The Bankruptcy Code provides that a discharge will not include a debt given for an extension, renewal, or refinancing of credit, to the extent obtained by the use of a false, written financial statement on which the creditor reasonably relied. 11 U.S.C. § 523(a)(2)(B).[2] The bankruptcy court found that Pryor's financial statement (1) concerned Pryor's financial condition; (2) was materially false; (3) was made or published with intent to deceive Chromatic; and (4) was reasonably relied on by Chromatic when it held off on collection attempts and continued to extend credit to UPIC. On appeal, Pryor challenges the fourth finding from a factual and legal standpoint.

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[2] Chromatic pleaded only section 523(a)(2)(B) as a basis for exception from discharge. This case does not involve a claim for discharge under the similar, tort-based exception of subsection (a)(2)(A). See In re Ferguson, 84 B.R. 859, 861 (Bankr. S.D. Fla. 1988).

Pryor thus directs his attack primarily at the bankruptcy court's recognition that the exception from discharge was limited to the portion of the debt actually extended in reliance on the false financial statement. Pryor contends that the bankruptcy court held that the credit extended to UPIC after July 2, 1986, was excepted from discharge. Because Pryor did not guarantee the credit extended after July 2, 1986, he argues, the bankruptcy court impermissibly excepted from discharge a debt that was never his.

Pryor asserts that section 523(a)(2) requires that the debt Pryor guaranteed must have been extended by Chromatic before or contemporaneous with Pryor's false financial statement on which Chromatic relied. Pryor would have us rule that Chromatic's extension of credit to UPIC in July and August of 1986 was unrelated to his guarantee of UPIC's existing debt on July 2, 1986. To hold otherwise, he asserts, would essentially extend his guarantee beyond its intended scope to cover post-guarantee debt. This strained characterization of the transaction ignores, or at least distorts, the underlying realities of the deal.

By June 1986, UPIC owed Chromatic $169,857.95 in unpaid invoices. Chromatic refused to agree to the consolidation and guarantee until Pryor produced a personal financial statement. The consolidation of the outstanding debt into the second promissory note and Pryor's guarantee of that note would clear UPIC's open account and make it possible for UPIC to obtain further credit from Chromatic. Chromatic was unwilling to allow the consolidation--and hence the zeroing of the open account--without assurance of Pryor's

financial condition. Pryor undeniably understood that in return for his personal guarantee of UPIC's existing debt Chromatic would extend further credit to UPIC.[3]

In short, Pryor presented Chromatic with a materially false financial statement, intending Chromatic to grossly overestimate the value of Pryor's personal guarantee of UPIC's debt, and thereby fraudulently obtained an extension of credit for UPIC. The bankruptcy court measured the extent of Chromatic's reliance by reference to Chromatic's later sales on account, which totalled over $81,000.

Under these circumstances, 11 U.S.C. § 523(a)(2) provides for an exception to discharge. The statute does not require that the extension of credit run directly to Pryor.[4] In re Gerlach, a recent Tenth Circuit case, involved a debtor who had personally guaranteed the debts of his John Deere dealership. 897 F.2d 1048 (10th Cir. 1990). As in this case, the debtor fraudulently induced a creditor to extend credit to his business and later sought relief in bankruptcy. The Tenth Circuit held that these debts would be

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[3] See In re Ashley, 903 F.2d 599, 604 (9th Cir. 1990) (noting that although the debtor did not directly receive money as a result of his fraudulent acts, he "was indeed obtaining something for himself").

[4] See In re Gitelman, 74 B.R. 492, 496 (Bankr. S.D. Fla. 1987) (noting that it is not necessary under section 523(a)(2) that the property be actually procured for the debtor); In re Firestone, 26 B.R. 706, 714 (Bankr. S.D. Fla. 1982) ("[T]he 'better view' is that it is not necessary that the property be actually procured for the debtor himself."); see also 3 Collier on Bankruptcy ¶ 523.08[1], at 523-42 (1989).

excepted from discharge, and it was "immaterial that the credit was extended to the dealership rather than [the] defendant."[5]

It is sufficient for the purposes of section 523 that Pryor fraudulently used a materially false financial statement to bargain for the extension of credit to his corporation. "It is well-settled that where the debtor is an officer and shareholder of a corporation and he uses a false financial statement to induce a creditor to extend credit to the corporation, the individual debtor is considered to have obtained money within the meaning of § 523(a)(2)(B)."[6] The effect of this holding is not to extend Pryor's guarantee but rather to evaluate the damage done by his furnishing a materially false financial statement to Chromatic.[7]

III.

CONCLUSION

Chromatic satisfied its burden of showing that Pryor was not entitled to a discharge of part of the debt he guaranteed. We therefore **AFFIRM** the judgments of the bankruptcy and district courts.

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[5] Gerlach, 897 F.2d at 1051 n.1. Although Gerlach is factually distinguishable from the present case, because the debtor in Gerlach had guaranteed all of the corporate debts, it nevertheless demonstrates that the extension of credit need not run directly to the debtor. Id. at 1050-51.

[6] In re Delano, 50 B.R. 613, 617 (Bankr. D. Mass. 1985); see In re Mann, 40 B.R. 496, 499 (Bankr. D. Mass. 1984); In re Winfree, 34 B.R. 879, 883 (Bankr. M.D. Tenn. 1983); In re Holwerda, 29 B.R. 486, 489 (Bankr. M.D. Fla. 1983).

[7] Because the bankruptcy court was correct in measuring the detriment to Chromatic in this way, we do not reach Pryor's procedural contentions.