UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1916
Summary Calendar

IN THE MATTER OF: ALVIN LEONARD CRESWELL,

Debtor.

ALVIN LEONARD CRESWELL,
d/b/a CRESOPER OIL a/k/a
A. L. CRESWELL,

Appellant,

versus

HERBERT E. AUTREY, ET AL.,

Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(7:93 CV 40 K)

(February 17, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Alvin Leonard Creswell appeals from the district court's affirming the bankruptcy court's ruling that his debt to the appellees is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). We **AFFIRM**.

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[1] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.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.

In 1984, 56 individuals, including the appellees, who had invested in oil and gas ventures created and sold by Creswell, filed suit against him and others in the United States District Court for the Northern District of Texas. An agreed judgment in favor of the investors for $1.1 million, was entered against the defendants, including Creswell, on October 31, 1989. In March 1990, Creswell filed a petition under Chapter 7 of the Bankruptcy Code, and listed the debt represented by the agreed judgment on his schedules.

The investors filed a complaint objecting to the discharge of the debt, alleging that Creswell obtained their money by false pretenses or representations, or actual fraud. The claims of all but seven of the investors were dismissed after they failed to appear at a show cause hearing in May 1991. The claims of two more were dismissed because they failed to appear at trial. Accordingly, the claims of only five investors are at issue in this appeal: Elzetta Beck, Faron McKinley, H. E. Autrey, Clyde White, and Ray Samour. After a two-day trial, the bankruptcy court held that the debts owed to each of the appellees are non-dischargeable, pursuant to 11 U.S.C. § 523(a)(2)(A). The district court affirmed the judgment of the bankruptcy court.

II.

"A discharge in bankruptcy `does not discharge an individual debtor from any debt ... for money, property, services, or an extension, renewal, or refinancing of credit, to the extent

obtained by ... false pretenses, a false representation, or actual fraud...." ***Luce v. First Equipment Leasing Corp. (Matter of Luce)***, 960 F.2d 1277, 1281 (5th Cir. 1992) (quoting 11 U.S.C. § 523(a)(2)(A) (Supp. 1991)). "Determinations as to the dischargeability of debts under section 523 are reviewed under the clearly erroneous standard". ***Id***. at 1280 (brackets and quotation marks omitted) (citing ***Cheripka v. Republic Ins. Co. (In re Cheripka)***, No. 91-3249, 1991 WL 276289, at *10 (3d Cir. Dec. 31, 1991)). "Thus we will affirm the bankruptcy court's findings unless `on the entire evidence, [this court is] left with the definite and firm conviction that a mistake has been committed'". ***Sutton v. Bank One, Texas, Nat'l Ass'n (Matter of Sutton)***, 904 F.2d 327, 329 (5th Cir. 1990) (quoting ***United States v. United States Gypsum Co.***, 333 U.S. 364, 395 (1948)).

"Section 523(a)(2)(A) contemplates frauds involving `moral turpitude or intentional wrong; fraud implied in law which may exist without imputation of bad faith or immorality, is insufficient'". ***Allison v. Roberts (Matter of Allison)***, 960 F.2d 481, 483 (5th Cir. 1992) (quoting 3 ***Collier on Bankruptcy*** ¶ 523.08[4] (15th ed. 1989) (footnote omitted)).

> [A] cause of action for fraud will exist under 11 U.S.C. § 523(a)(2)(A) when a debtor makes promises of future action which, *at the time they were made*, he had no intention of fulfilling. In order to succeed on this legal theory, the objecting party must prove that: (1) the debtor made representations; (2) at the time they were made the debtor knew they were false; (3) the debtor made the representations with the intention and purpose to deceive the creditor; (4) that the creditor relied on such representations; and (5) that the

> creditor sustained losses as a proximate result of the representations.

Bank of Louisiana v. Bercier (Matter of Bercier), 934 F.2d 689, 692 (5th Cir. 1991) (quoting ***In re Roeder***, 61 B.R. 179, 181 (Bankr. W.D. Ky. 1986)) (emphasis in original). A creditor must establish the nondischargeability of a debt by a preponderance of the evidence. ***Matter of Luce***, 960 F.2d at 1281 (citing ***Grogan v. Garner***, 498 U.S. 279, 111 S. Ct. 654, 661 (1991)).

The bankruptcy court found that Creswell and his agents made representations to each of the appellees[2] that were false and misleading when made; that they were made recklessly; that they were relied upon by the appellees; and that the appellees suffered damages as a proximate result of such reliance. It found further that the appellees were unsophisticated investors, and that the assurances by Creswell and his agents that the appellees would be investing in a "Christian" enterprise caused them to be more "trusting" and more susceptible to believing the false representations.[3]

As is evident from the following brief summary of the appellees' testimony, the bankruptcy court's findings were not clearly erroneous. Autrey, a retired marine engineer and cattle farmer from Alabama, who invested $23,838.46, testified that

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[2] Appellee Elzetta Beck did not appear or testify at trial, but the bankruptcy court found that Mrs. Autrey was Beck's agent and that the false representations had been made to her in that capacity. Mrs. Autrey's testimony supports these findings.

[3] Creswell is a minister. The appellees learned about the investments at church, and were told by Creswell's agents that only Christians would be allowed to invest in the oil wells.

Creswell's agent, Vidari, told him that Creswell was a retired minister who had drilled 28 wells, and that the venture was so successful that it would be open to investment only through churches. Vidari told Autrey that "it was a sure thing", and that the reason for success was the fact that Creswell tithed 20% of the income from the operations. Autrey testified that he relied on Vidari's representations in deciding to make investments. He stated that he believed the representations were trustworthy, and did not fear fraud, because it was a Christian organization.

Autrey's wife, Gloria, testified that she inquired about making investments for Beck, an elderly friend who attended her church.[4] Mrs. Autrey testified that Mrs. Beck wouldn't have borrowed $4,250 to invest in the oil wells but for the assurance that only Christians could invest; she believed that the representations about the success of the wells were trustworthy because she expects Christians to be honest.

McKinley, a community college instructor in Alabama, who invested a total of $17,152.62, testified that he learned about Creswell at church through the Autreys, and called Vidari. He testified that Vidari stated that approximately 20 wells had been drilled, that all of them were producing, and that there was virtually no way that he could lose. McKinley stated that he would not have invested in the oil wells but for the representations that the organization was a Christian one.

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[4] Mrs. Autrey is a minister.

Samour, a retired appliance salesman from Texas, who invested $31,950, testified that Vidari told him that Creswell had completed over 20 successful oil wells, and that he could make at least $3,000 a month if he invested. Samour testified that Vidari did not mention any failures. Vidari also represented that investment opportunities were only available for Christians.

White, an electrical contractor and part-time farmer from Texas, who invested $23,300, similarly testified that Creswell's agents represented that investments were available only to Christians; that all of the wells were producing; and that there were no "dry holes".

The evidence more than supports the bankruptcy court's findings that the appellees were unsophisticated investors who relied to their detriment on the false and misleading representations made by Creswell and his agents.[5] Accordingly, it did not clearly err in finding that the debts owed by Creswell to the appellees are nondischargeable pursuant to § 523(a)(2)(A).

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[5] We reject Creswell's contention that the appellees failed to prove that they were damaged as the result of their reliance on the false representations, as well as his related contention regarding the bankruptcy court's adjustments for the small returns on the appellees' investments. As stated, Creswell had earlier consented to the entry of an agreed judgment for $1.1 million in favor of the appellees and 51 other investors. Each of the appellees testified as to the amount of their investments with him and the lack of any substantial return on them. Creswell did not introduce any evidence to contradict the appellees' proof. The findings as to the amounts of the nondischargeable debts owed to each of the appellees are not clearly erroneous.

III.

For the foregoing reasons, the judgment is

AFFIRMED.