

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4241
Summary Calendar

IN THE MATTER OF: RICHARD K. HOWARD, JR.
(Social Security No. XXX-XX-XXXX)

Debtor.

TOMMY H. CONDREY

Appellant,

versus

BILLY R. VINING, ET AL,

Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(91-CV-2696)

(January 24, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

BENAVIDES, Circuit Judge:*

Tommy H. Condrey (Condrey) filed an adversary proceeding¹ in the bankruptcy case of Richard K. Howard, Jr. (Howard).² In the

* 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Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ Condrey v. Howard, No. 90AP-1041.

² In re: Richard K. Howard, Jr., No. 89BK-11672.

complaint, he sought to have a debt Howard allegedly owed him excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) and (4).³ The bankruptcy judge dismissed the suit, finding that it was barred by res judicata based on a previous adversary proceeding prosecuted against Howard by the trustee in the bankruptcy court. Condrey appealed to the district court, which affirmed the dismissal. Condrey has now appealed to this Court.

As Condrey admits in his brief before this Court, "[t]he basis of [his] claim was the lawsuit entitled Condrey v. Howard et al., number 89-CV-0953 on the docket of the U.S. District Court for the Western District of Louisiana." The lawsuit to which Condrey refers as the basis for the instant claim of discharge consisted of a civil RICO claim Condrey had filed against Howard and others.

At a hearing before the bankruptcy judge, Condrey's attorney admitted that Condrey's claim was based upon a contingent non-liquidated disputed claim. Condrey was referring to his civil RICO

³ In pertinent part, § 523(a) provides that:

A discharge under [specified] section[s] of this title does not discharge an individual debtor from any debt--

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition; . . .

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

claim. Based upon his contingent creditor status he also sought determination of fraudulent transfers and falsification of documents and improper corporate manipulation so as to make available assets from other parties for the payment of his claims against the bankruptcy estate. Any action requested by Condrey as to the other defendants in the bankruptcy proceeding were likewise subject to his creditor status.

Condrey's civil RICO suit has come to a final disposition. In an unpublished opinion, this Court affirmed the district court's judgment as a matter of law against Condrey, concluding that Condrey had failed to "prove that the alleged RICO enterprise -- consisting of himself, Richard Howard, Louisiana Fiber Corp., Howard Gin, Inc., and Dixie River Cotton Products -- engaged in a "pattern of racketeering activity.'" Ritter v. Howard, No. 92-5261, p. 2 (5th Cir. July 5, 1994), cert. denied, __ U.S. __, 115 S.Ct. 581 (1994).

Condrey's claim to be a creditor was contingent on his successful prosecution of the RICO suit. Because he did not prevail on his RICO claim, he is conclusively precluded from prosecuting the bankruptcy action in the court below and this appeal as a creditor. The determination of Condrey's RICO case has mooted this appeal.

IT IS ORDERED that this cause be DISMISSED as MOOT.