

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-2354
Summary Calendar

IN THE MATTER OF:

CHARLES T. PHILLIPS and JOAN B. PHILLIPS,

Debtors,

CHARLES T. PHILLIPS and JOAN B. PHILLIPS,
d/b/a PEACHTREE FARM,

Appellants,

VERSUS

RESOLUTION TRUST COMPANY AS SUCCESSOR
IN INTEREST TO THE FSLIC AS CONSERVATOR
OF AMERIWAY SAVINGS ASSOCIATION BY THE FDIC
AS THE MANAGING AGENT FOR THE CONSERVATOR,

Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 91 3342)

(December 8, 1992)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:¹

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The debtor appeals the order of the district court which affirmed the bankruptcy court's order rejecting debtor's claim for attorney's fees under § 523(d) of the Bankruptcy Code. We are persuaded that the bankruptcy court did not abuse its discretion in rejecting debtor's claim for attorney's fees. We therefore affirm the order of the district court.

In this § 7 bankruptcy proceeding appellee, RTC, as receiver for Ameriway Savings Association, opposed the appellant debtor's discharge in bankruptcy. The objection was predicated on 11 U.S.C. § 727 and 11 U.S.C. § 523. At the adversary hearing, when RTC rested its case, the debtor moved for an involuntary dismissal. The court dismissed RTC's § 523 complaint, but refused to award the debtor attorney's fees. The court then heard the debtor's case on the § 727 objection and granted discharge after denying relief on RTC's § 727 claim.

RTC predicated its § 523 objection on the delivery of a false financial statement. RTC offered no proof that the financial institution relied on the financial statement. In fact, the evidence at trial indicated that the statements were delivered after the loans were made.

The question presented is whether the bankruptcy court abused its discretion in concluding that RTC's position was "substantially justified" under §523(d), thus precluding an award of attorney fees.

The bankruptcy court in this case was entitled to consider that RTC had two independent grounds for opposing the debtor's

discharge: § 523 and § 727. Thus, even if RTC's argument under § 523 was weak, it was clearly justified in opposing the discharge under § 727. The court was also entitled to consider RTC's difficulty in discovering the facts after it takes over a failed savings and loan institution. This record does not reflect the kind of bad faith or abusive practices by RTC that required the bankruptcy court to award attorney's fees to the debtor. The bankruptcy court, therefore, did not abuse its discretion when it rejected the debtor's claim for attorney's fees.

AFFIRMED.