

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4952
Summary Calendar

In the Matter of: GARY L. HONEYCUTT, Debtor.

GARY L. HONEYCUTT,

Appellant,

versus

COMMERCIAL NATIONAL BANK,

Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
((BKCY # 92-BK-10489-S07) 93-CV-235)

(January 21, 1994)

Before POLITZ, Chief Judge, JOLLY and DUHÉ, Circuit Judges.

POLITZ, Chief Judge:*

Gary L. Honeycutt appeals from the denial of his discharge in
bankruptcy. Finding no error, we affirm.

*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should not be published.

Background

On February 18, 1992 Honeycutt filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code. Commercial National Bank (CNB) objected to Honeycutt's discharge alleging that he had concealed personal property and transferred corporate property in an attempt to defraud his creditors. The facts supporting CNB's claim began to unfold in the Fall of 1990. At that time Honeycutt exercised sole control over Digital Electronic Services, Inc. (DES), a company operating under a Chapter 11 plan of reorganization. Honeycutt hired Roy Hurley, a financial consultant, who informed him that DES could not survive absent a substantial capital contribution. No contribution was made; Hurley continued to work for DES until August 1991.

A series of transfers from Honeycutt to his wife began.¹ Sharon Honeycutt first acquired Practice Management Systems, Inc. (PMS), a corporation whose only asset consisted of a tax loss carry-forward. Through PMS she purchased leases and equipment from Digital Leasing Company (DLC), a sole proprietorship owned by Gary Honeycutt. Although the transfers occurred in November of 1990, Gary Honeycutt did not thereafter relinquish control but continued to manage the assets for which his wife had paid little, if any, consideration.

In March of 1991 Hurley formed a company called Digital Service and Computers, Inc. (DSC). Over the next six months, DSC

¹Honeycutt and his wife executed a separation of property agreement October 20, 1989.

acquired the intangible assets of DES. These assets -- for which DES received no payment -- included customer lists, account information, and logo and invoice designs. DES employees transferred to DSC but continued to treat their customers as if no change had occurred. On August 23, 1991 DES went out of business. In response to CNB's suit against DES and Honeycutt to recover on a loan and a personal guaranty, Honeycutt filed a voluntary petition in bankruptcy. The bankruptcy court denied Honeycutt's discharge and the district court affirmed. Honeycutt timely appealed.

Analysis

The sole issue on appeal is whether Honeycutt transferred or concealed property with the intent to hinder, delay, or defraud his creditors. In reviewing the factual findings of the bankruptcy court we will reverse only if those findings are clearly erroneous.² We perceive no clearly erroneous findings of fact.

Section 727 of the Bankruptcy Code permits denial of discharge to a debtor who, with the intent to hinder, delay, or defraud his creditors, transfers or conceals property within one year of the filing of a petition for bankruptcy.³ Honeycutt asserts that he could not have intended to defraud CNB by conveying the intangible assets of DES because the assets had no value. Albeit cognizant of

²Bankruptcy Rule 8013; **Matter of Luce**, 960 F.2d 1277 (5th Cir. 1992).

³11 U.S.C. § 727(a)(2)(A).

the company's poor financial condition, we cannot agree. Honeycutt recognized that DES possessed a good will and going concern value and devised a plan to deprive CNB of that value. The transferring of the assets of DES to DSC was an apparent effort to salvage the assets while avoiding the obligations. The mere changing of the name of the company cannot absolve it of its liabilities. Substantial evidence exists to support the conclusion that Honeycutt intended to defraud CNB.⁴

Honeycutt's transfers to his wife likewise operated to defraud CNB. Honeycutt argues that these transfers occurred more than a year before he filed for bankruptcy; he would evade the "continuing concealment" doctrine,⁵ which provides that transferring legal title to property while retaining a secret beneficial interest constitutes concealment for the purposes of section 727. If concealment of that interest, although commencing long before bankruptcy, continues into the year immediately preceding the filing of bankruptcy, a continuing concealment has occurred. Continuing concealment operates as an exception to the one-year bar contained in section 727 and returns the property to the reach of that protective section.

The evidence at bar supports a finding that Honeycutt continuously concealed his interests in PMS and the DLC assets. He executed purported sales of the company and the assets to his wife

⁴Accord Stoumbos v. Kilimik, 988 F.2d 949 (9th Cir.), cert. denied, 114 S.Ct. 190 (1993).

⁵See In re Olivier, 819 F.2d 550 (5th Cir. 1987).

but continued to treat them as his own. Such sham transactions will not be recognized as putting those assets beyond the reach of CNB.

Honeycutt finally asserts that at the time he made the above transfers he lacked the fraudulent intent required by section 727 to justify denial of discharge. Such intent may be inferred from the facts and circumstances presented.⁶ The decisions of the court *a` quo* are AFFIRMED.

⁶**Matter of Chastant**, 873 F.2d 89 (5th Cir. 1989) (because a debtor's intent is rarely susceptible of direct proof, a court may infer it from debtor's actions and circumstances of the case).