UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Cadle Co. v. Orsini

289 F. App'x 714 (5th Cir. 2008) · No. No. 07-40450 · Decided August 11, 2008

SUMMARY

The Fifth Circuit affirmed decisions allowing Anthony and Rebecca Orsini to receive a bankruptcy discharge. The court held that Cadle Company failed to establish grounds for nondischargeability or denial of discharge under 11 U.S.C. §§ 523(a)(2)(B), 727(a)(3), and 727(a)(5).

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per curiam; Edith H. Jones, Chief Judge; W. Eugene Davis, Circuit Judge; Emilio M. Garza, Circuit Judge
JURISDICTION	Federal
DECIDED	August 11, 2008
DOCKET	No. 07-40450
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Cadle Company appealed the bankruptcy court's denial of its objections to the Orsinis' discharge and the district court's affirmance of that decision.
STANDARD OF REVIEW	The court reviewed the bankruptcy court's factual findings for clear error and its legal conclusions de novo. The court also applied clear-error review to the bankruptcy court's findings concerning the adequacy of records under § 727(a)(3).
PRECEDENTIAL VALUE	Unpublished and nonprecedential under 5th Cir. R. 47.5, except under the limited circumstances set forth in Rule 47.5.4.
PARTIES	The Cadle Company v. Anthony Francis Orsini, Rebecca Lynn Orsini

TOPICS

nondischargeable debts · discharge · chapter 7 · bankruptcy disclosure requirements · appellate procedure

PRACTICE AREAS

Bankruptcy Bankruptcy discharge Bankruptcy nondischargeability Appellate procedure Commercial litigation

QUESTIONS PRESENTED

1. Whether the Orsinis' guarantee debt was nondischargeable under 11 U.S.C. § 523(a)(2)(B) because they allegedly made materially false written statements concerning their financial condition with intent to deceive.
2. Whether the Orsinis' discharge should be denied under 11 U.S.C. § 727(a)(3) for failing to keep and produce adequate records from which their financial condition could be ascertained.
3. Whether the Orsinis' discharge should be denied under 11 U.S.C. § 727(a)(5) for failing to satisfactorily explain the alleged loss or reduction in value of jewelry and coin assets.

HOLDINGS

1. The guarantee debt was dischargeable because Cadle failed to establish that the Orsinis made the alleged misrepresentations with intent to deceive. Although intent may be inferred from the totality of the circumstances, the evidence did not compel that finding.
2. The discharge should not be denied under § 727(a)(3) because the documents produced by the Orsinis formed an adequate picture of their financial condition, and Cadle did not demonstrate that missing documents prevented it from ascertaining that condition.
3. The discharge should not be denied under § 727(a)(5) because the Orsinis satisfactorily explained the apparent reduction in the value of their jewelry and coin collection, and Cadle did not prove that the assets, other than one acknowledged lost item, were missing.

KEY QUOTATIONS

> *"Although the evidence in this case might support an inference of an intent to deceive, it does not compel such a finding."* (at 6)

> *"Because Cadle bears the burden of proof, the absence of these documents undermines its claim."* (at 8)

FACTUAL BACKGROUND

The Orsinis personally guaranteed a $300,000 loan obtained by their corporation to acquire and operate a gift shop and restaurant. They submitted personal financial statements listing cash, retirement accounts, personal property, and a residence, but the business later failed and the corporation defaulted. After the Orsinis filed Chapter 7 petitions, Cadle, which had purchased the loan, challenged discharge based on alleged fraudulent financial statements, inadequate records, and unexplained reductions in the value of jewelry and coins.

PROCEDURAL HISTORY

Anthony and Rebecca Orsini filed Chapter 7 bankruptcy petitions after defaulting on a business loan that they had personally guaranteed. Cadle filed an adversary proceeding seeking to except the guarantee debt from discharge under 11 U.S.C. § 523(a)(2)(B) and to deny the bankruptcy discharge under 11 U.S.C. §§ 727(a)(3) and 727(a)(5). After trial, the bankruptcy court overruled Cadle's objections, and the district court affirmed. The Fifth Circuit affirmed both lower-court decisions.

DISPOSITION

affirmed

CASES CITED

- Gen. Elec. Capital Corp. v. Acosta (In re Acosta), 406 F.3d 367, 372 (5th Cir. 2005)
- Otto Candies, L.L.C. v. Nippon Kaiji Kyokai Corp., 346 F.3d 530, 533 (5th Cir. 2003)
- Walker v. Cadle Co. (In re Walker), 51 F.3d 562, 565 (5th Cir. 1995)
- Grogan v. Garner, 498 U.S. 279, 286-87 (1991)
- Norris v. First Nat'l Bank (In re Norris), 70 F.3d 27, 30 n.12 (5th Cir. 1995)
- Equitable Bank v. Miller (In re Miller), 39 F.3d 301, 305 (11th Cir. 1994)
- Miller, 39 F.3d 301, 305-06 (11th Cir. 1994)
- Robertson v. Dennis (In re Dennis), 330 F.3d 696, 703 (5th Cir. 2003)
- Cadle Co. v. Terrell, 46 F. App'x 731, 2002 WL 1973217 (5th Cir. July 30, 2002)
- First Tex. Sav. Ass'n, Inc. v. Reed (In re Reed), 700 F.2d 986, 993 (5th Cir. 1983)
- Bellco First Federal Credit Union v. Kaspar (In re Kaspar), 125 F.3d 1358, 1361-62 (10th Cir. 1997)