UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

# In re Golf 255, Inc.

652 F.3d 806 (7th Cir. 2011) · No. No. 10-3732 · Decided July 22, 2011

## SUMMARY

The Seventh Circuit affirmed the district court's judgment upholding the bankruptcy court's refusal to rescind a sale of a golf course or reopen the bankruptcy case. The court held that the alleged conduct by a creditor did not constitute fraud on the court under Federal Rule of Civil Procedure 60(d)(3), and it rejected the appellants' requests for further discovery and investigation. The court also granted the trustee's motion for sanctions under Federal Rule of Appellate Procedure 38, characterizing the appeal as frivolous and abusive.

## CASE DETAILS

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| COURT | United States Court of Appeals for the Seventh Circuit |
| WRITING FOR THE COURT | Richard A. Posner; Daniel A. Manion; Joan Humphrey Lefkow |
| JURISDICTION | Federal |
| DECIDED | July 22, 2011 |
| DOCKET | No. 10-3732 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Jakich and Dunlap appealed the district court's affirmance of bankruptcy-court orders denying their requests for discovery and investigation into alleged fraud, refusing to rescind the bankruptcy sale, and closing the bankruptcy case. The Seventh Circuit affirmed and granted the trustee's motion for sanctions under Federal Rule of Appellate Procedure 38. |
| PRECEDENTIAL VALUE | Published precedential opinion of the United States Court of Appeals for the Seventh Circuit. |
| PARTIES | Nick Jakich, Jay Dunlap v. Robert E. Eggmann, trustee, Golf 255, Inc., Michael Kielty, Supreme Turf Product, Incorporated |

## TOPICS

bankruptcy fraud · chapter 11 · appellate procedure · sanctions · remedies

## PRACTICE AREAS

Bankruptcy Appellate procedure Civil procedure Remedies Commercial litigation

## QUESTIONS PRESENTED

1. Whether the alleged conduct by creditor Michael Kielty constituted fraud on the court warranting relief from the bankruptcy and sale orders under Federal Rule of Civil Procedure 60(d)(3).
2. Whether Jakich and Dunlap were entitled to further discovery or investigation into their fraud allegations.
3. Whether the bankruptcy sale could be rescinded under 11 U.S.C. § 363(m).
4. Whether the appeal was frivolous and warranted sanctions under Federal Rule of Appellate Procedure 38.

## HOLDINGS

1. Fraud on the court is a narrow category of fraud involving conduct that defiles the court itself or fraud by officers of the court that prevents the judicial machinery from performing its impartial adjudicative function. A creditor's alleged submission or encouragement of inflated claims, without participation by a lawyer acting as such, is ordinary fraud or witness-like misconduct, not fraud on the court.
2. The bankruptcy sale could not properly be rescinded absent evidence that the purchaser, the recreation district, was a party to the alleged fraud.
3. The appeal was frivolous, and the trustee was entitled to sanctions under Federal Rule of Appellate Procedure 38.

## KEY QUOTATIONS

> *“The problem of definition arises from the fact that a motion to set aside a judgment on the ground of fraud on the court has no deadline.”* (809)

> *“It must therefore be defined narrowly lest it "become an open sesame to collateral attacks, unlimited as to the time within which they can be made by virtue of the express provision in Rule 60(b) [now 60(d)] on this matter, on civil judgments."”* (809)

> *“The motions and appeals filed, many by Stanton, on behalf of Jakich and Dunlap have been not only groundless but also obsessive, a form of harassment, unprofessional, and an abuse of the bankruptcy court, the district court, and this court.”* (811)

## FACTUAL BACKGROUND

Golf 255, Inc.'s principal asset was a golf course, and creditors successfully forced the corporation into involuntary Chapter 11 bankruptcy. The bankruptcy trustee sold the golf course for $5 million, producing enough proceeds to pay outside creditors in full and insider creditors substantial partial satisfaction. Jakich and Dunlap later alleged that creditor Michael Kielty had orchestrated a fraud on the court by manipulating the involuntary bankruptcy and claims, but investigations by the trustee, the U.S. Trustee, and the bankruptcy and district courts found no sufficient basis for the allegations.

## PROCEDURAL HISTORY

Creditors filed an involuntary Chapter 11 petition against Golf 255, Inc., and the bankruptcy court granted the petition and appointed Robert Eggmann as trustee. The bankruptcy court approved the sale of Golf's principal asset, a golf course, and the district court dismissed an earlier appeal from the sale as moot under 11 U.S.C. § 363(m). After later motions seeking discovery, investigation, rescission of the sale, and reopening or continuation of the bankruptcy case were denied, the district court affirmed the bankruptcy court. The Seventh Circuit affirmed and awarded sanctions for the frivolous appeal.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The trustee was directed to submit a request for a specific amount of damages and costs under Rule 38.

## CASES CITED

- Drobny v. Commissioner, 113 F.3d 670, 677-78 (7th Cir. 1997)
- Appling v. State Farm Mutual Automobile Insurance Co., 340 F.3d 769, 780 (9th Cir. 2003)
- Harbold v. Commissioner, 51 F.3d 618, 622 (6th Cir. 1995)
- Kupferman v. Consolidated Research & Manufacturing Corp., 459 F.2d 1072, 1078 (2d Cir. 1972)
- Kenner v. Commissioner, 387 F.2d 689, 691 (7th Cir. 1968)
- Oxxford Clothes XX, Inc. v. Expeditors International of Washington, Inc., 127 F.3d 574, 578 (7th Cir. 1997)
- In re Whitney-Forbes, Inc., 770 F.2d 692, 698 (7th Cir. 1985)
- Baltia Air Lines, Inc. v. Transaction Management, Inc., 98 F.3d 640, 642-43 (D.C. Cir. 1996)
- Root Refining Co. v. Universal Oil Products Co., 169 F.2d 514, 534-35 (3d Cir. 1948)
- Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 240-45 (1944)
- Gleason v. Jandrucko, 860 F.2d 556, 559-60 (2d Cir. 1988)
- Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985) (en banc)
- In re Met-L-Wood Corp., 861 F.2d 1012, 1018 (7th Cir. 1988)
- In re Edwards, 962 F.2d 641 (7th Cir. 1992)
- In re Chicago, Milwaukee, St. Paul & Pacific Railroad, 799 F.2d 317, 329-31 (7th Cir. 1986)
- In re Trism, Inc., 328 F.3d 1003, 1006 (8th Cir. 2003)
- In re Mann, 907 F.2d 923, 926 (9th Cir. 1990)