

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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In re)	Bankruptcy Case No. 80C-02229
REX MORRIS CATMULL and)	
JUNE B. CATMULL,)	
)	
Debtors.)	Civil Proceeding No. 83PC-00961
)	
REX MORRIS CATMULL and)	
JUNE B. CATMULL,)	
)	
Plaintiffs.)	
)	
-vs-)	
)	
RULON G. VAN ORDEN,)	
BARBARA VAN ORDEN, and)	
WAYNE VAN ORDEN,)	
)	
Defendants.)	MEMORANDUM OPINION ON MOTIONS TO DISMISS

Not published

FACTS AND PROCEDURAL BACKGROUND

On September 9, 1983, plaintiffs Rex M. and June B. Catmull filed this action against Rulon G. Van Orden, Barbara Van Orden, and Wayne Van Orden. The complaint stems from a lawsuit in Madison County, Idaho, in which the Van Ordens were the plaintiffs and the Catmulls were the defendants. The Madison County, Idaho lawsuit was tried to a jury. A judgment against the Catmulls was rendered on August 27, 1979. The Catmulls' complaint in this action makes the following allegations:

3. Said judgment was rendered after a trial so tainted with judicial misconduct and error as to constitute a miscarriage of justice.

4. Such misconduct included:
 - a. Refusal to submit jury instructions on plaintiff's Counterclaim for breach of contract.
 - b. Refusal to allow impeachment of defendant RULON VAN ORDEN for felony convictions.
 - c. Submitting legal issues to the jury for determination, including:
 - (1) The presence or absence of consideration
 - (2) Rescission of contract
 - (3) Statute of frauds
 - (4) Parol evidence rule
 - d. Refusal to admit evidence permitted under the hearsay rule.
 - e. Commenting on the evidence during the trial.
 - f. Admitting totally irrelevant and immaterial exhibits.
 - g. Failing to properly instruct the jury as to its role as trier of fact.
 - h. Failure to notify plaintiffs herein of the trial setting until four weeks prior to trial.
 - i. Refusal to exclude the testimony of witnesses who were not identified and whose testimony was not summarized prior to trial, pursuant to interrogatories propounded over a year prior to trial.
 - j. Requiring the jury to form legal opinions and conclusions and determine the admissibility of evidence as a part of its deliberations.
5. Said trial was further tainted by the admission of fraudulent and perjured evidence, which also deprived plaintiffs herein of a fair trial.
6. Said judgment was obtained without any showing by defendants herein of any actual or pecuniary loss, and was founded upon a contract which defendants herein had admittedly breached.
7. The other judgments and orders upon which defendants' claims rest depend for

- their validity upon the validity of the judgment rendered August 27, 1979.
8. By means of said judgments and orders, defendants herein have succeeded in depriving plaintiffs of nearly all of their assets, including the means with which to defend themselves against the unjust claims of defendants or to prosecute their appeals to the Idaho Supreme Court.
 9. It is inequitable to allow these judgments and orders to stand.
 10. It was for the purpose of obtaining relief from said judgments that these debtors filed their original bankruptcy petition.
 11. This court has jurisdiction under 11 U.S.C. 1471, and under the Emergency Rule for Bankruptcy Procedure to grant equitable relief from said judgments and orders and to disallow the claims of defendants based thereon.

Based upon these allegations, the Catmulls request that this court grant them relief from the judgment by way of disallowing the claims made in the Catmulls' bankruptcy case which are based upon the judgment.

On September 26 and October 6, 1983, defendants filed motions to dismiss the complaint. Because the motions raised matters outside the pleadings and because the court did not exclude any of the outside matters, the court, pursuant to Rule 56, gave notice that it would treat the motions as motions for summary judgment. The parties were given until December 9, 1983 to present material made pertinent to the motions. The parties, however, did not present any further material.

The extraneous materials presented by the Van Ordens in support of their motions contain several facts relevant to the motions:

1. The Madison county trial was a two week trial. The Catmulls were represented by counsel. The Catmulls testified extensively and submitted substantial evidence. After judgment, the court entered an order supplementing the judgment and held that the Catmulls were entitled to a reduction in the judgment in the amount of \$141,284.59.
2. The Catmulls appealed the judgment to the Idaho Supreme Court but their appeal was dismissed on November 3, 1980 for failure to file a brief.
3. The Catmulls then filed a complaint in the U.S. District Court for the District of Idaho. They appeared pro se. Their complaint alleged breach of the contract that was the subject of the Madison County lawsuit by Rulon G. and Barbara Van Orden. On a motion for summary judgment by the Van Ordens, the U.S. District Court found that the Van Ordens were entitled to a judgment as a matter of law.
4. The basis of the U.S. District Court's decision was based on the doctrine of res judicata. The court found that each of the causes of action in the federal court lawsuit had already been litigated in the Madison County lawsuit.
5. The court found that the Catmulls had not shown fraud or collusion.

Based upon these facts, the Van Ordens request that the court apply the doctrine of res judicata in this lawsuit. The Catmulls, however, argue that this lawsuit presents issues never litigated before, namely the issue of relief from the judgment.

DISCUSSION

It is true that a bankruptcy court "may exercise equity powers in bankruptcy proceedings to set aside fraudulent claims, including a fraudulent judgment where the issue of fraud has not been previously adjudicated." Heiser v. Woodruff, 327 U.S. 726, 732 (1946). But relief from a judgment based upon an alleged fraud must be limited to those cases in which fraud is both alleged and proved.

Paragraphs 3, 4, and 6 of the Catmulls' complaint in this action do not allege fraud. They merely allege errors which could have been corrected on appeal. Such errors do not constitute a sufficient basis for a finding of fraud which would justify relief from the judgment. See 1B MOORE'S FEDERAL PRACTICE para. 0.405(4.--1) at 196-199 (1983).

The only allegations of fraud appear in paragraph 5 of the complaint in a rather vague form: "Said trial was further tainted by the admission of fraudulent and perjured evidence, which also deprived plaintiffs herein of a fair trial." This allegation is insufficient to form the basis of relief from the judgment because it does not specify what evidence was fraudulent or perjured.

Assuming that the Catmulls had shown specific, material, perjured or fraudulent evidence, however, that would not justify

granting the Catmulls relief from the judgment. Perjured or fraudulent evidence constitutes intrinsic fraud. And it is extrinsic, not intrinsic fraud, that may, under the majority view, properly form the basis of an order relieving parties from a judgment. See MOORE'S supra, para. 0.405(4.--1) at 202; 0.407; 7 MOORE'S FEDERAL PRACTICE para. 60.37; Bulloch v. United States, Nos. 82-2245, 82-2352 (10th Cir., November 23, 1983), slip opinion at 15.¹

For these reasons, the motions to dismiss should be granted.

Counsel for Rulon G. and Barbara Van Orden shall submit an appropriate order.

DATED this 31 day of March, 1984.



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE

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Because the court in Heiser v. Woodruff, supra, referred to perjured testimony in a way that indicated that perjured testimony might have been a basis for relief from the judgment in the absence of res judicata considerations, it might be argued from Heiser that even intrinsic fraud could properly form the basis of an order relieving the Catmulls from the Madison County Judgment if they were able to prove intrinsic fraud. Although this argument may have merit, see MOORE'S, supra at 60.37, this court is bound by the law in this circuit which is set forth in Bulloch, supra. The court in Bulloch said: "Fraud on the court (other than fraud as to jurisdiction) is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function -- thus where the impartial functions of the court have been directly corrupted." Slip opinion at 15-16. See also Chisholm v. House, 160 F. 2d 632 (10th Cir.)