243

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re INDEPENDENT CLEARING HOUSE COMPANY, a Trust, Debtor.	
UNIVERSAL CLEARING HOUSE COMPANY, a Trust, aka NATIONAL CLEARING HOUSE COMPANY, a Trust, Debtor.	
ACCOUNTING SERVICES COMPANY, a Trust, Debtor.	
ROBERT D. MERRILL, Trustee, Plaintiff-Appellee, v. GERALD L. TURNER, Defendant-Appellant.	District Court Nos. C-84-0771J & C-84-0798J MEMORANDUM OPINION AND ORDER

APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
(Bankruptcy Case Nos. 81A-02886, 81A-02887 & 81A-03704;
Adversary Proceeding No. 83PA-3081)

These consolidated appeals present another chapter in the continuing story of the clearinghouse fiasco. The story is told more fully elsewhere. See Merrill v. Abbott (In re Independent

Clearing House Co.), 41 Bankr. 985, 991-95 (Bankr. D. Utah 1984), aff'd in part, rev'd in part, 77 Bankr. 843 (D. Utah 1987) (en banc). Suffice it to say that the so-called clearinghouses--Independent Clearing House Company and Universal Clearing House Company--were allegedly run as a Ponzi scheme. When the scheme collapsed, the clearinghouses and related entities filed petitions in bankruptcy. The trustee in bankruptcy, Robert D. Merrill, then filed an adversary proceeding against certain attorneys who had provided legal services for the clearinghouses, including the appellant, Gerald L. Turner, to set aside as fraudulent conveyances under 11 U.S.C. §§ 548(a) and 544(b) certain transfers from the debtors to the attorneys. The trustee also sought an accounting from the attorneys.

The matter was tried to the bankruptcy court on August 16 and 28, 1984. Turner did not appear at the trial but was represented by counsel.[1] After the first day of trial, the bankruptcy court ordered Turner "to furnish a full and complete accounting respecting the receipt and disposition of debtors' assets" by August 28, 1984, the date set for the continuation of

---

[1] At the time, Turner was under a criminal indictment for his actions in connection with the clearinghouse bankruptcies. On February 17, 1987, Turner was convicted of fraudulent concealment in violation of 18 U.S.C. § 152. United States v. Cardall, No. CR-83-00065A. However, the pending criminal action does not appear to have been the reason Turner failed to appear at the trial in this matter. His attorney stated that Turner was simply "out of town on his own activities" at the time. Transcript, Aug. 16, 1984, at 183.

the trial. See Order Directing Accounting (Gerald L. Turner), Record on Appeal at 16-17. Turner did not file a complete accounting with the court by August 28, 1984, and on August 31, 1984, the court granted judgment for the trustee and against Turner in the sum of $359,528.80, together with pre- and post-judgment interest. Turner then filed notices of appeal from both the August 20, 1984, order and the August 31, 1984, judgment. The appeals were later consolidated.

Turner raises a number of issues in his appeals, but at oral argument Turner's counsel conceded that the issues could be reduced to two: whether the bankruptcy court had jurisdiction over the bankruptcy cases, and whether the record considered as a whole supported the bankruptcy court's decision.

I.

Turner first argues that the bankruptcy court lacked subject matter jurisdiction over the bankruptcy cases because the bankruptcy petitions were not filed in good faith and because the debtor enterprises cannot qualify as "debtors" entitled to relief under the Bankruptcy Code, 11 U.S.C. §§ 101-151326 (1982). This court has previously considered these arguments as applied to these debtors. Merrill v. Abbott (In re Independent Clearing House Co.), 77 Bankr. 843, 849-50 (D. Utah 1987) (en banc);

Merrill v. Allen (In re Universal Clearing House Co.), 60 Bankr. 985, 990-94 (D. Utah 1986). For the reasons stated in those opinions, the court rejects Turner's jurisdictional arguments.

II.

Turner's remaining contention is that the evidence did not support the bankruptcy court's ruling. With a few minor exceptions, this court disagrees.

At the trial before the bankruptcy court, the trustee argued that all transfers to Turner were avoidable as fraudulent conveyances under sections 548 and 544(b) of the Bankruptcy Code because the debtors received less than a reasonably equivalent value in exchange for the transfers.

Turner neither appeared at trial nor offered any testimony on his behalf. His attorney argued at trial that Turner was merely a (pardon the expression) clearinghouse to channel the money to other attorneys who had provided legal services to the debtors and therefore should not be liable for the funds he received, the implication being that the debtors received their money's worth in legal services in exchange for the transfers.[2]

---

[2] At trial, Turner's counsel argued that those who received funds of the debtors from Turner "may well be liable for something" but that Turner could not be because he "retained little or nothing of those funds" transferred. Transcript, Aug. 16, 1984, at 179. To the extent Turner argues that he cannot be

Turner apparently acted as coordinating counsel for numerous actions filed against the debtors across the country during 1980 and 1981. As part of Turner's job he would find local counsel to handle various legal matters for the debtors. Turner would offer the attorney an initial retainer and agree on a reasonable hourly rate. On or about the twentieth of each month Turner would receive from each attorney an estimate of costs and hours to be billed for that month. Turner would compute the total legal fees to be paid for the month, adding in his own fees, and submit the figure to the debtors for payment. The debtors would give Turner

---

liable for a fraudulent conveyance if he later transferred the money to third parties, his argument lacks merit. Section 550 of the Bankruptcy Code specifically allows the trustee to recover an avoided transfer from either "the initial transferee of such transfer or the entity for whose benefit such transfer was made" or from "any immediate or mediate transferee of such initial transferee." Although there is some authority that a mere conduit is not an "initial transferee" within the meaning of the statute, see, e.g., Metsch v. First Alabama Bank of Mobile (In re Colombian Coffee Co.), 75 Bankr. 177, 178-79 (S.D. Fla. 1987) (a bank that acts as a commercial conduit is not a "transferee" within the meaning of section 550); Ducker v. Fairmeadows II (In re Bridges Enterprises, Inc.), 62 Bankr. 300, 303 (Bankr. S.D. Ohio 1986) (trustee cannot recover funds from attorneys who served as a conduit for the funds to effect a settlement between their clients), Turner's failure to account for the funds he received, see infra pp. 16-17, deprived the bankruptcy court of the evidence necessary to make a finding that Turner was merely a conduit for the money. Thus, the trustee could recover a fraudulent transfer from either Turner or from Turner's transferee. The fact that the trustee chose to proceed against Turner and not Turner's transferees does not relieve Turner from liability under the code. Turner may have been able to protect himself by making his transferees third-party defendants, see Bankr. R. 7014; Fed. R. Civ. P. 14(a), but he apparently chose not to.

the money, which he would deposit in his general account. He would then write checks on this account and send them to the other attorneys. See In re Independent Clearing House, Nos. 81M-02886 & -02887, slip op. at 3-4 (Bankr. D. Utah Nov. 15, 1982), Record on Appeal at 180-81.[3] See also Transcript, Aug. 16, 1984, at 109, 140-41 (testimony of the trustee's accountant that Turner provided legal services for the debtors and also transferred funds on their behalf).

A.

To determine whether the bankruptcy court's judgment is supported by the evidence, this court must look at the evidence that was before the bankruptcy court. It may not set aside the bankruptcy court's factual findings unless they are clearly

---

[3] Turner argues that the bankruptcy court's memorandum opinion of November 15, 1982, establishes these facts as the law of the case. However, it is not at all clear from the bankruptcy court's opinion that it made any findings of fact with respect to the debtors' practice vis-à-vis Turner. Rather, it relied extensively on Turner's memorandum in setting out Turner's factual theory. See In re Independent Clearing House, Nos. 81M-02886 & -02887, slip op. at 3-4 (Bankr. D. Utah Nov. 15, 1982), Record on Appeal at 180-81. It appears that the bankruptcy court merely accepted Turner's theory for purposes of that decision only. But regardless of whether the bankruptcy court's November 15, 1982, opinion established any facts as the law of the case, the opinion did not establish the facts at issue in these appeals, namely, the amount of money Turner received from the debtors prepetition and the adequacy of the consideration for the conveyances.

erroneous. See Bankr. R. 8013. See also Bankr. R. 7052; Fed. R. Civ. P. 52(a).

At the trial the bankruptcy court took judicial notice of a partial accounting filed on behalf of Turner, in the form of a disclosure of compensation, covering the period from June 16 through September 25, 1981, which includes the ninety days before the bankruptcy petition was filed (the preference period under 11 U.S.C. § 547). That accounting is not part of the record on appeal, but the trustee's accountant, Dr. Ronald Bagley, testified as to what the accounting showed. See Transcript, Aug. 16, 1984, at 121-22. That accounting showed that Turner received some $266,000 during this period,[4] which was $500 more than the trustee's accountant's records showed Turner had received. See id. at 121. The accounting also showed that Turner had disbursed $177,021.36, but Dr. Bagley testified that, of this amount,

---

[4] It is not clear from the record on appeal how much Turner's accounting showed he received between June 16 and September 25, 1981. The accounting itself is not part of the record on appeal, and the transcript of the trial before the bankruptcy court is equivocal on this issue. At one point, the trustee's accountant testified that the amount was $260,134.90, Transcript, Aug. 16, 1984, at 121, but later he referred to the amount as $266,000, id. The trustee's brief on appeal states that Turner's accounting acknowledged receipt of $266,134.94 during this period, Brief of Appellee at 4, but the portion of the record the trustee cites does not support this figure. At trial, the trustee argued that Turner had received $265,634.94 during the relevant period. See Transcript, Aug. 28, 1984, at 11. From the way the bankruptcy court apparently arrived at its result, the exact amount may not have been relevant. See infra pp. 10-11.

numerous disbursements had not been adequately explained. See id. at 121, 145-51.[5] Finally, the accounting showed that Turner's firm had billed the debtors $46,230, leaving about $43,000 totally unaccounted for.

The trustee's accountant further testified that Turner received $535,987.16 during the year preceding the bankruptcy filings. However, at trial the trustee introduced photocopies of checks drawn on accounts of the debtors and payable to Turner or his law firm totalling only $465,997.16. See plaintiff's exhibits 5-44, Record on Appeal at 100-38. Of this amount, $195,634.94 was received after June 15, 1981, and presumably was included in Turner's prior accounting.

Thus, the evidence before the bankruptcy court showed that Turner received $270,362.22 between September 17, 1980, and June 15, 1981, for which he had not accounted, and that he received some $266,000 between June 16 and September 25, 1981, of which he had accounted in one fashion or another for $223,251.36, although the adequacy of the accounting was disputed.

---

[5] In determining the amount of the judgment, the bankruptcy court disallowed disbursements during the preference period totaling $46,545. Comparing Dr. Bagley's testimony with the court's calculation (which was based on the trustee's summary of the evidence) and defendant's exhibit 1, it appears from the record that the bankruptcy court inadvertently allowed Turner credit for some of the items not adequately accounted for, based on the trustee's incomplete summary of the evidence. Thus, if there was any error in calculating the amount of disallowable disbursements, see infra note 7, the error favored Turner. The trustee has not appealed the bankruptcy court's decision.

At the end of the first day of trial, the bankruptcy court ordered Turner to account for the money he had received "for the period commencing September 16, 1980," and continued the trial until August 28, 1984, to allow Turner to prepare his accounting. See Order Directing Accounting (Gerald L. Turner), Record on Appeal at 16.

Turner did not submit a full accounting. Instead, his attorney introduced into evidence a number of checks drawn on Turner's general account, most of which were written between September 17, 1980, and September 24, 1981, and made payable to various attorneys. See defendant's exhibit 1. The trustee agreed that the checks were part of the accounting required. Transcript, Aug. 16, 1984, at 186. At the trial Turner called Richard Cardall, one of the principals in the clearinghouse operations, to testify as to Turner's relationship with the debtors. For the transfers represented by the checks in defendant's exhibit 1, Turner's counsel asked Cardall if Turner was authorized to pay the payee on behalf of the debtors, but Cardall invoked his fifth amendment privilege against self-incrimination in response to every question. Turner did not testify himself, see supra note 1 and p. 4, but it appears from statements of his counsel that, had he been required to take the stand, he also would have invoked his fifth amendment privilege. See, e.g., id. at 179, 182-84.

Turner's counsel also introduced two letters and a document that he had apparently prepared that purported to explain certain undocumented payments out of Turner's general account. See defendant's exhibits 2, 4-5, Record on Appeal at 83-87, 89-93. The bankruptcy court refused to receive the document, defendant's proposed exhibit 2, but received the letters, defendant's exhibits 4 and 5. See Transcript, Aug. 28, 1984, at 16-18. The first letter was from Turner to the trustee's attorney, William Fowler, stating that Turner had paid $6,954.08 in expenses for the debtors between September 1980 and June 1981 and had distributed $87,533.14 during this same period, out of $136,892.90 received. The letter ended, "No funds are held which are not earned . . . ." Defendant's exhibit 4, Record on Appeal at 90. The second letter was from Wallace R. Bennett, an attorney, to Mr. Fowler outlining the fees Mr. Bennett received through Turner for representing the clearinghouses between August 19, 1980, and April 7, 1981. The letter indicated that, from September 17, 1980, through April 7, 1981, Mr. Bennett received $22,500 from Turner for services rendered to the debtors. The letter says that "detailed billings rendered to Mr. Turner" for the period from April 20, 1981, to November 16, 1981, "are all attached," but the billings are not part of the record. See defendant's exhibit 5, Record on Appeal at 92.

At the conclusion of the trial, the bankruptcy court ruled

in favor of the trustee and granted him judgment for $359,528.80. The bankruptcy court apparently arrived at that sum as follows: The court found that Turner had received $270,362.22 between September 17, 1980, and June 15, 1981, and, with one exception, had not accounted for any of it.[6] Turner's accounting for the period from June 16 to September 24, 1981, left $42,883.58 unaccounted for.[7] However, of the $177,021.56 that Turner disbursed during this period, the court disallowed an additional $46,545 for transfers listed on the accounting but which the trustee argued were "largely unexplained." That made a total of $359,790.80 unaccounted for. From this total, the bankruptcy court deducted $262, the amount of a check from Turner to Western Airlines, see supra note 6, leaving $359,528.80 unaccounted for. The bankruptcy court granted the trustee a judgment for that amount.

---

[6] The one exception was a check for $262 dated November 26, 1980, and made payable to Western Airlines, defendant's exhibit 6, Record on Appeal at 94, for which the bankruptcy court gave Turner credit.

[7] Using the trustee's own figures, the amount unaccounted for should have been $42,383.38, not $42,883.58. The trustee argued that Turner received $265,634.94 between September 17, 1980, and June 15, 1981, disbursed $177,021.56 during the same period and billed $46,230, Transcript, Aug. 28, 1984, at 11, leaving a balance of $42,383.38. However, the $265,634.94 starting point is problematic. See supra note 4. Moreover, the trustee apparently gave Turner credit for some disbursements that Dr. Bagley testified were not adequately accounted for, see supra note 5, so Turner cannot be heard to complain of any slight mathematical error in computation.

B.

This court concludes that, with a few minor exceptions, the bankruptcy court's judgment is supported by substantial evidence.

The trustee sought to avoid the transfers to Turner as fraudulent conveyances under 11 U.S.C. §§ 548 and 544(b).[8]

Section 548(a) of the bankruptcy code stated:[9]

> The trustee may avoid any transfer of an interest of the debtor in property . . . that was made or incurred on or within one year before the date of the filing of the petition, if the debtor--
> (1) made such transfer . . . with actual intent to hinder, delay, or defraud any entity to which the

---

[8] The bankruptcy court found that the transfers were avoidable under both section 548 and section 544(b). Section 544(b) allows the trustee to "avoid any transfer of an interest of the debtor in property . . . that is voidable under applicable law by a creditor holding an unsecured claim . . . ." The "applicable law" for determining the rights of an unsecured creditor to avoid a transfer is state law. Hunts Point Tomato Co. v. Roman Crest Fruit, Inc. (In re Roman Crest Fruit, Inc., 35 Bankr. 939, 947 (Bankr. S.D.N.Y. 1983). The provision of state law the trustee relied on in this case is the Utah Fraudulent Conveyance Act, Utah Code Ann. §§ 25-1-1 through -16 (1984), specifically, sections 25-1-4 through -7. The Utah act invalidates, among other transfers, conveyances by an insolvent that are made without "fair consideration." See Utah Code Ann. §§ 25-1-4 & -8. To the extent the court concludes that the debtors received less than a reasonably equivalent value in exchange for the transfers, the court also concludes that the transfers were made without "fair consideration" and thus were avoidable under section 544(b) as well as under section 548.

[9] Section 548(a) was amended by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333. However, the 1984 amendments do not apply to these cases. See Pub. L. No. 98-353, § 553, 98 Stat. at 392 (the 1984 amendments to title 11 apply only to cases filed at least 90 days after July 10, 1984, the date of their enactment).

> debtor was or became, on or after the date that such transfer occurred . . . , indebted; or
> (2)(A) received less than a reasonably equivalent value in exchange for such transfer . . . ; and
> (B)(i) was insolvent on the date that such transfer was made . . . .

The trustee has the burden of proving each element of a fraudulent conveyance. 4 Collier on Bankruptcy ¶ 548.10 at 548-118 (L. King 15th ed. 1987). "This burden of proof never shifts." Id. at 548-119.

The bankruptcy court concluded, and rightfully so, that the trustee had met his burden of proving that Turner had received transfers of "an interest of the debtor in property" within the year before the petitions in bankruptcy were filed and that the debtors were insolvent on the dates the transfers were made. Thus, the question before the bankruptcy court was whether the debtors had received "less than a reasonably equivalent value" in exchange for the transfers.[10] The trustee had the burden of proof on that issue. First Fed. Sav. & Loan Ass'n v. Hulm (In re Hulm), 45 Bankr. 523, 526 (Bankr. D.N.D. 1984).

Although the burden of proof (in the sense of the ultimate risk of nonpersuasion) never shifts from the trustee in an action such as this, the burden of going forward with the

---

[10] Because the bankruptcy court found that the transfers were constructively fraudulent because made for less than a reasonably equivalent value, it did not reach the question of the debtors' actual intent to hinder, delay or defraud creditors under 11 U.S.C. § 548(a)(1). See Transcript, Aug. 16, 1984, at 176-77.

evidence may shift. 4 Collier on Bankruptcy ¶ 548.10 at 548-119 (L. King 15th ed. 1987). The trustee's accountant testified that he found nothing in the debtors' books and records to indicate the nature of the services Turner provided the debtors, his time spent in representing the debtors or what he did with the monies he received from the debtors. Transcript, Aug. 16, 1984, at 50, 155-56. At that point, the burden of going forward with evidence to explain the transfers shifted to Turner.[11]

---

[11] The bankruptcy court's order directing Turner to account for funds he received as the debtors' attorney may have caused such a shift independent of Dr. Bagley's testimony.

Turner's counsel argued in the bankruptcy court that the trustee was not entitled to an accounting because he had not proved all the elements of his claim of fraudulent conveyances. See Transcript, Aug. 16, 1984, at 175-76. Counsel confused the issues before the bankruptcy court. The bankruptcy court was faced with two distinct questions: whether or not to order an accounting, and whether or not to avoid certain transfers as fraudulent conveyances. The trustee did not have to prove the elements of a fraudulent conveyance to entitle him to an accounting. Turner's duty to account arose from his position as attorney for the debtors, not from his receipt of an allegedly fraudulent conveyance. See 7A C.J.S. Attorney & Client § 247 at 451 (1980) ("An attorney is under an absolute duty to give his client a full, detailed, and accurate account of all money and property which has been received and handled by the attorney, and must justify all transactions and dealings concerning them"). Thus, proof of the elements of a fraudulent conveyance was irrelevant to the trustee's request for an accounting. It was enough to show that Turner had received monies from the debtors while acting as their attorney. Under these circumstances, the court concludes that, as "the representative of the estate," 11 U.S.C. § 323(a), with authority "closely analogous to that of a solvent corporation's management," Commodities Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 353 (1985), the trustee could enforce the debtors' right to an accounting, and the bankruptcy court, as a court of equity, had jurisdiction to compel the accounting.

Turner suggests that he had no burden to meet. Rather, he argues, it was the trustee who failed to meet his burden of proving a fraudulent conveyance because he did not introduce any positive evidence that the debtors received less than a reasonably equivalent value in exchange for the allegedly fraudulent transfers. Because the trustee did not meet his initial burden, Turner argues, no burden ever shifted to him, no duty to account ever arose and the trustee is not entitled to any recovery.

Of course, if there is simply no evidence of consideration one way or the other, it ordinarily means that the trustee has not met his burden of showing a fraudulent conveyance, since to prove a fraudulent conveyance the trustee must prove that the debtors received less than a reasonably equivalent value in exchange for the transfer. See, e.g., Samore v. Breuer (In re Breuer), 68 Bankr. 48, 49-50 (Bankr. N.D. Iowa 1985). However, this is not a case of an absence of any evidence but of evidence of an absence. The trustee's theory is that the debtors received nothing in exchange for the transfers. If the debtors in fact received nothing, as the trustee claims, there can be no evidence to introduce. In such a case, the trustee has met his burden by showing that he looked for evidence of the consideration the debtors received where one would expect to find such evidence (in the debtors' books and records) and found nothing. One can

reasonably conclude from Dr. Bagley's testimony that the debtors received nothing in exchange for the transfers. The trustee having thus established a prima facie case of fraudulent conveyances, the burden shifted to Turner to rebut that prima facie case. If he failed to satisfy that burden, the bankruptcy court could conclude that there was no satisfactory explanation for the transfers and that they were thus fraudulent.

All Turner produced were checks drawn on his general account, defendant's exhibit 1, for which no explanation was given. Although the bankruptcy court may have inferred that checks payable to attorneys who had provided legal services to the debtors on other occasions were for legal services the debtors received, it was not required to draw that inference, especially when, as here, there was no indication that the payments were even made on behalf of the debtors. In fact, there was no evidence that the debtors were the only source of the funds in Turner's general account. For all the bankruptcy court could tell, the checks were meant as payment for Turner's own debts, out of Turner's own money, or they may have been on behalf of clients other than the debtors, out of those clients' funds. Moreover, not all of the checks were even payable to attorneys. See infra note 16. In short, Turner failed to meet his burden of going forward with evidence to rebut the trustee's prima facie case of fraudulent conveyances. Turner's purported accounting

was grossly inadequate.[12] Cf. In re Braten Apparel Corp., 68 Bankr. 955, 966-67 (Bankr. S.D.N.Y. 1987) ("The mere provision of masses of data is insufficient"; an accounting must provide particulars, from which the other side can reasonably test its accuracy and honesty); Simper v. Scorup, 78 Utah 71, 1 P.2d 941, 943-45 (1931) ("a mere general statement" based on bank statements with no other explanation was insufficient to satisfy the defendant's duty to account). With a few exceptions, the bankruptcy court's implicit factual finding that the debtors received less than a reasonably equivalent value in exchange for the avoided transfers was not clearly erroneous.

The first exception involves the letter from Turner to Mr. Fowler, attorney for the trustee, in which Turner states that he paid $6,954.08 in expenses for Business Consultants.[13] Defendant's exhibit 4. He further states that receipts for the

---

[12] At trial, Turner's counsel attempted to justify the inadequacies in Turner's accounting by implying that he had produced all the evidence he could without jeopardizing Turner's privilege against self-incrimination. However, at no point did Turner invoke his fifth amendment privilege, nor did he explain the lack of any affidavit or other evidence from the attorneys who supposedly provided services for the debtors and received payments for those services through Turner.

[13] Turner states in his letter that all fees paid to him in connection with his representation of the debtors "were billed to and paid by Business Consultants." Defendant's exhibit 4, Record on Appeal at 89. Dr. Bagley's testimony supports the conclusion that payments by or for Business Consultants were payments by or on behalf of the debtors. See Transcript, Aug. 16, 1984, at 115-17.

expenses were supplied to Business Consultants. The court concludes that Turner should have been given credit for the $6,954.08 in expenses that he paid on behalf of the debtors. The records necessary to document these expenses were apparently in the possession of Business Consultants, not Turner, and therefore equally available (if not more available) to the trustee.[14]

The letter also states that Turner received $136,892.90 from Business Consultants on behalf of the debtors between September 1980 and June 1981, from which he distributed $87,533.14. Turner's credibility is suspect given the trustee's evidence that Turner received $270,362.22 from the debtors during this period.[15] However, even if Turner's letter can be believed, the bankruptcy court was not required to accept this accounting (if it can be called such) since it suffers from one of the same

---

[14] In crediting Turner with $262 for the check to Western Airlines, see supra note 6, the bankruptcy court apparently thought that Turner was entitled to credit for at least some expenses he paid for the debtors. The check to Western Airlines appears to be a payment of an expense of the debtor. There was no evidence that the check was for Turner's personal travel on behalf of the debtors. In fact, the only testimony regarding Turner's travel on behalf of the debtors concerned a trip Turner made to the Grand Cayman islands in May. See Transcript, Aug. 16, 1984, at 153, 160-62. The $262 check was dated November 26, 1980.

[15] At the very least, the bankruptcy court could have concluded that Turner owed $182,829.08 for the pre-preference period: $49,359.76 that the letter on its face leaves unaccounted for ($136,892.90 - $87,533.14) plus the $133,469.32 that the evidence shows Turner received during this period in addition to the amount he acknowledges receiving in the letter.

defects as Turner's other accounting for this period, defendant's exhibit 1: The letter does not say what the payments were made for. Moreover, it appears from the record that at least some of the payments were not even to attorneys or, if to attorneys, were not for legal services.[16] In short, there was no evidence from which the bankruptcy court could have concluded that the debtors received reasonably equivalent value in exchange for any of the payments, with the single exception of $48 in court costs. Turner should have been credited with the $48 payment, but the bankruptcy court did not err in disallowing Turner credit for the other, unexplained disbursements.

The third exception is the letter from Wallace R. Bennett, defendant's exhibit 5. The letter shows that, between September 16, 1980, and April 7, 1981, Mr. Bennett received from Turner $22,500 in legal fees for his work on behalf of the debtors. Moreover, the letter states the nature of at least some of this work--work on "some proposed legislation and a possible bank acquisition and statutory merger"--and the rate of compensation.

---

[16] For example, Turner lists a $900 payment to R&B Travel and a $3,000 payment to William Black, who, other evidence shows, was a medical doctor, not an attorney. See defendant's exhibit 1, Record on Appeal at 71. Turner also shows a $13,000 payment to Randy Grant, an attorney, but other checks to Randall Grant name a nonlawyer, Maurice Anderson, as a co-payee, suggesting that the payment may not have been for legal services that the debtors received. See Transcript, Aug. 16, 1984, at 150-51; defendant's exhibit 1, Record on Appeal at 65-66. Defendant's exhibit 1 lists similar payments to nonlawyers.

The court concludes that Turner should have been given credit for the $22,500 paid Mr. Bennett on behalf of the debtors between September 16, 1980, and April 7, 1981.

Finally, defendant's exhibit 1 shows that one of the checks made payable to Turner that the trustee introduced as evidence, plaintiff's exhibit 17, was returned unpaid. Turner should be credited with the amount of that check, $7,500.

In summary, then, the bankruptcy court clearly erred in denying Turner credits amounting to $37,002.08. The bankruptcy court should have given Turner for this amount, leaving a liability of $322,526.72. As modified, the judgment of the bankruptcy court is affirmed. This proceeding is remanded to the bankruptcy court for entry of a final judgment in the amount of $322,526.72.

IT IS SO ORDERED.

Dated this 30 day of December, 1987.

BY THE COURT

BRUCE S. JENKINS, Chief Judge
UNITED STATES DISTRICT COURT

Copies mailed to counsel 12/31/87: mw
Wm. G. Fowler, Esq.
Robert D. Merrell, Esq.
Edwin F. Guyon, Esq.
Clerk, U.S. Bankruptcy Court