

IN THE UNITED STATES BANKRUPTCY COURT

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FOR THE DISTRICT OF UTAH

COUNTER COPY - DO NOT REMOVE - ~~CORRESPONDENCE WITH PAGE 50 PER PAGE~~

In re) Bankruptcy Case No. 82C-00356
)
W. R. HURST, INC., dba)
William R. Hurst, Inc.,) Civil Proceeding No. 82PC-1470
Blanding Husky, The Hurst Co.,)
Hurst Custom Hauling, Hurst)
Trucking and Hurst Building)
& Supply Co., and Husky Oil)
& Tire,)
)
Debtor.)
)
)
)
SEMI-SERVICE, INC.,)
A Utah Corporation,)
)
Plaintiff.)
)
-vs-)
)
W. R. HURST, INC,)
)
Defendant.)

MEMORANDUM DECISION

Plaintiff's complaint against this corporate chapter 11 debtor alleges two causes of action: first, that a debt owed to plaintiff arising from the pre-petition sale of equipment to debtor is not dischargeable because it was incurred through fraud and second, that plaintiff, an unsecured creditor, is entitled to relief from the automatic stay.

Debtor counterclaims against plaintiff alleging that post-petition debtor sold a trailer to plaintiff for \$4,500 but that plaintiff failed to pay. Plaintiff replies that the trailer was given to it on consignment, that debtor has unclean hands,

and that plaintiff is entitled to offset any debts owed to plaintiff by debtor. Plaintiff, however, admitted that the trailer was sold, that a receivable to the debtor in the sum of \$4,500 was generated, and that plaintiff has not delivered the money to debtor. Again, plaintiff relies on an alleged right to an offset under Section 553.

Debtor moved to dismiss the complaint and for a judgment on the pleadings on its counterclaim. At a hearing held on debtor's motions on February 15, 1983, the court granted the motion to dismiss and took under advisement the motion for judgment on the pleadings, in part to consider the question of the court's jurisdiction of this action. Subsequently, the United States District Court for this district issued its opinion in In re Richardson and In re Color Craft Press, Ltd. (February 22, 1983). Jurisdiction of this action is described in that opinion.

The court now files this memorandum decision explaining its ruling on the motion to dismiss and making its decision on the motion for judgment on the pleadings.

A complaint filed against a corporate debtor in chapter 11 alleging that a debt is nondischargeable under Section 523(a) fails to state a claim upon which relief can be granted. Under Section 1141(d), a corporate debtor always receives a discharge upon the confirmation of a plan regardless of the existence of grounds under Section 523(a) for nondischargeability unless the order of confirmation provides otherwise, unless the court

approves a written waiver of discharge signed by the debtor after the order for relief under chapter 11, or unless the plan liquidates all or substantially all of the estate's property and the debtor does not engage in business after consummation of the plan. The existence of grounds for nondischargeability of a debt under Section 523(a) is irrelevant. In any event, Section 523(a), by its terms, applies to individual not corporate debtors.¹ See In Keumpel Co., 14 B.R. 324 (Bkrtcy. S.D. Ohio 1981).

Plaintiff's request for relief from the automatic stay was dismissed. Plaintiff alleged entitlement to relief under Section 362(d)(1) solely on the ground that plaintiff lacked adequate protection. No other cause for relief under Section 362(a) was alleged. Unsecured claims are not entitled to adequate protection. See In re South Village, Inc., 25 B.R. 987, 997 n. 18 (Bkrtcy. D. Utah 1982). Plaintiff also alleged entitlement to relief under Section 362(d)(2). That allegation failed to state a claim upon which relief could be granted because plaintiff alleged no interest in the equipment, by way of security interest, statutory lien, judgment lien, equitable lien, or otherwise.

For purposes of the motion for judgment on the pleadings with respect to debtor's counterclaim, the court assumes as true

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Section 523(a) complaints fail to state a claim against chapter 7 corporate debtors for the same reason. In addition, Section 727(a)(1) prohibits corporate debtors from receiving a discharge in chapter 7.

the factual allegations made in plaintiff's reply noted above. On those facts, debtor is entitled to a judgment against plaintiff for \$4,500. Plaintiff alleged no facts or law which bar a judgment on the pleadings. Plaintiff is not entitled to offset its claim against debtor against the \$4,500 debt owed to debtor because the debt is not mutual and because the debt owing to debtor arose after the commencement of the case, facts fatal to the right to offset under Section 553. Finally, the equitable doctrine of unclean hands is no defense. First, no facts support it. That debtor's check was returned unpaid is not proof of unclean hands. Second, that equitable defense is inapplicable to a legal claim, such as debtor's legal claim to the \$4,500.

Debtor is entitled to its costs but is not entitled to an award of attorney's fees against plaintiff.

IT IS SO ORDERED.

Debtor's counsel is directed to submit a conforming judgment.

DATED this 8 day of April, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE