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Credibility of the Parties is Key Component In Objection To Discharge Proceedings

Posted by Jessica Grossarth

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On June 6, 2014, the United States District Court for the District of Connecticut affirmed the Bankruptcy Court's (Weil, J.) decision overruling a pro se creditor's objections to the debtor's discharge under 11 U.S.C. §727(a)(2)(A), (a)(3) and (a)(4)(A).

A pro se creditor, Mr. Holmes, and the debtor, Mr. Portaluppi, were housemates for some period of time prior to 2007. Mr. Holmes claimed to have been Mr. Portaluppi's landlord for that cohabitation period and that Mr. Portaluppi owed him unpaid rent and taxes from 2005. On January 4, 2011, Mr. Portaluppi filed for Chapter 7 and listed Mr. Holmes as a creditor holding an unsecured non-priority claim. The creditor matrix submitted with the petition listed two addresses for Mr. Holmes; his last known address and an address for his counsel in a landlord/tenant case brought by Mr. Holmes against the debtor prior to the filing. Mr. Holmes did not show up at the Section 341 Meeting of Creditors, but commenced an adversary proceeding before the deadline for creditors to do so challenging the debtor's discharge on several grounds. The Bankruptcy Court held a two-day trial, and on February 19, 2012, issued a decision overruling Mr. Holmes's objections and granting the debtor a Chapter 7 discharge.

Mr. Holmes proffered six distinct arguments to the District Court hoping for a reversal. Instead, the District Court rejected all of Mr. Holmes's arguments, affirmed Judge Weil's decision on all fronts and dismissed the appeal. This summary addresses Mr. Holmes's first argument because it highlights the importance of witness credibility in a "he said, she said" dispute and how the Bankruptcy Court's credibility determinations hold significant weight.

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Mr. Holmes alleged that the debtor intentionally listed an obsolete address for him on his bankruptcy petition thereby precluding him from attending the meeting of creditors. The District Court found this claim to fail for two reasons. First, Mr. Holmes cannot demonstrate that he has suffered any harm as a result of not attending the meeting of creditors. Mr. Holmes received actual notice of the bankruptcy proceeding in time to file the adversary proceeding, and thus, Mr. Holmes had not shown and was unable to show, that he has suffered any prejudice from his failure to participate in the meeting of creditors.

Second, the District Court also found that the Bankruptcy Court's findings concerning the use of an obsolete address for Mr. Holmes were not clearly erroneous. Under 11 U.S.C. §727(a)(4), the bankruptcy court shall grant the debtor a discharge, unless the debtor "knowingly or fraudulently, in or in connection with the case – (A) made a false oath or account." The District Court found that the Bankruptcy Court's finding that the debtor's use of the incorrect address was an honest mistake was not clearly erroneous. The District Court reiterated that the Bankruptcy Court, as the trier of fact, is in a better position to determine credibility. The District Court deferred to the Bankruptcy Court with regard to credibility of the parties. The District Court upheld the Bankruptcy Court's decision and the debtor, by his own credibility, was able to save himself his discharge.

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