

Attorneys:

- **Irve J. Goldman**
igoldman@pullcom.com
203.330.2213

Jockeys Nearing Finishing Line in 25-YEAR Civil and Bankruptcy Litigation with their Former Business Managers

Civil Judgments are Given Collateral Estoppel Effect in Bankruptcy

*Posted by Irve J. Goldman
May 29, 2015*

Hall of fame horse racing jockeys Laffit Pincay, Jr. and Chris McCarron first sued their former business managers, Vincent and Robert Andrews, in California District Court in 1989 for fraud, breach of fiduciary duty and other wrongs, including violations under the federal Racketeer and Influenced Corrupt Organizations Act (RICO). The crux of the case was based on misrepresentations made by the Andrews to both jockeys in recommending and placing their riding income in various partnership investments in which the Andrews themselves were investors and from which they received substantial fees as advisors.

On July 30, 1992, after a full trial, the jury returned special verdicts in favor of the jockeys on all claims. On October 29, 1993, judgments were entered in their favor on the RICO claims. The Andrews then filed for Chapter 11 relief in Connecticut in February 1994.

Pincay and McCarron filed complaints to determine their judgments non-dischargeable based on fraud, breach of fiduciary duty and willful malicious injury, all of which are separate grounds for denying a bankruptcy discharge for debts of that type. They then sought summary judgment based on the doctrine of collateral estoppel, which in non-dischargeability proceedings will result in a finding that a debt is non-dischargeable if the creditor holds a judgment on a non-bankruptcy cause of action that has the same elements of non-dischargeability under federal bankruptcy law.

Jockeys Nearing Finishing Line in 25-YEAR Civil and Bankruptcy Litigation with their Former Business Managers

The Andrews, however, convinced the Bankruptcy Court to abstain from hearing the non-dischargeability proceedings until there was a final, non-appealable judgment from the California District Court. Thus, the parties returned to California, where, after substantial motion practice, Pincay and McCarron were ordered to elect either judgments on the state law claims or judgments under RICO. They elected RICO judgments, which were appealed by the Andrews to the Ninth Circuit Court of Appeals. The Ninth Circuit reversed and remanded on statute of limitations grounds, stating that its reversal did not disturb the state law verdicts for fraud and other claims.

A final judgment on all state law claims was entered by the California District Court in July 2002, which was appealed. That appeal finally came to rest when the U.S. Supreme Court denied the Andrews' petition for writ of certiorari in December 2005, whereupon the parties returned to bankruptcy court.

The focus of the case from that point forward was whether the California state law judgment for fraud should be given preclusive effect on the bankruptcy non-dischargeability claim for fraud and, in particular, whether the element of "justifiable reliance" was "actually and necessarily" decided (a requirement for collateral estoppel) in the California action. In *Field v. Mans*, the U.S. Supreme Court held that fraud under federal bankruptcy law requires the creditor who was allegedly defrauded to prove "justifiable reliance" on the fraud, as opposed to the more stringent "reasonable reliance" standard.

The Andrews argued that "justifiable reliance" was not "actually and necessarily decided" in the California action because they disclosed all of the fees they were taking in written investment memoranda they gave to Pincay and McCarron and therefore, there could be no "justifiable reliance." The Bankruptcy Court held that the elements of fraud, including justifiable reliance, were the same under both California law and non-dischargeability law and therefore, collateral estoppel applied to render the judgment debt non-dischargeable. On appeal, the Connecticut District Court affirmed.

On appeal to the Second Circuit Court of Appeals, the Andrews argued that justifiable reliance wasn't established in the California action because the jury instruction given on that element did not match what is required for a finding of justifiable reliance under federal non-dischargeability law, which they maintained does not allow for "blind reliance" and requires the would-be fraud victim to make a "cursory examination" to discover the fraud before reliance can be justified. Here, the Andrews argued that the numerous investment memoranda they gave to Pincay and McCarron disclosed that the Andrews were getting fees from the investments and therefore, reliance on the fraud could not be justified.

The Second Circuit rejected the Andrews' argument and held that *Field v. Mans* did not engraft a new "cursory examination" requirement for justifiable reliance under bankruptcy law, but adopted the common law standard that "[j]ustification is a matter of the qualities and characteristics of the particular plaintiff, and the circumstances of the particular case," *Andrews v. McCarron*, 595 Fed. Appx. 69, 71 (2d Cir. Feb. 11, 2015) (quoting *Field v. Mans*, 516 U.S. at 71). The jury instruction in the California action was held to comport with

Jockeys Nearing Finishing Line in 25-YEAR Civil and Bankruptcy Litigation with their Former Business Managers

Field v. Mans because it instructed that “the situation must have been such as to make it reasonable for him, in the light of the circumstance and his intelligence, experience and knowledge, to accept the representation without making an independent inquiry or investigation.” The Andrews’ petition for rehearing was denied on May 11, 2015. An issue left undecided by the Second Circuit was whether, even if the jury instruction did not comport with *Field v. Mans*, the Andrews were precluded from raising that deficiency because they failed to object to the jury instruction where the elements of fraud under California law and federal bankruptcy law were the same.

The lesson for litigators of fraud claims outside of bankruptcy proceedings is take note of the *Field v. Mans* standard in drafting jury instructions on state law claims for fraud.

The successful Appellees were represented by Irve Goldman, Esq. of Pullman & Comley, LLC.

This publication is intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. This report may be considered attorney advertising. To be removed from our mailing list, please email unsubscribe@pullcom.com with "Unsubscribe" in the subject line. Prior results do not guarantee a similar outcome.