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Public Law: Discharges In Bankruptcy

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proceeding would presumably then lie without violating the exclusive primary jurisdiction of the Commission.[64]

DISCHARGES IN BANKRUPTCY

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During last term, in *Louisiana Machinery Co. v. Passman,*[1] the Third Circuit took the opportunity to reaffirm the jurisprudence on the effect of a discharge in bankruptcy on a duly scheduled claim on which suit had been brought and default judgment taken after discharge. The litigation arose some ten years after adjudication, in a suit to revive a judgment.[2] The court quoted approvingly that "the effect of the discharge on a judgment against the bankrupt based on a provable claim is the same as its effect on the claim itself . . . the discharge will bar personal enforcement of the judgment against the bankrupt, or against any property of the bankrupt on which it was not a lien . . . the reduction of such liability to a judgment does not change its nature or character."[3]

Here, since the original judgment could not be enforced against the bankrupt, it followed that such a judgment, revived, could not be enforced either.[4] The fact that bankrupt permitted the suit to go to judgment against him did not defeat his right to interpose his discharge whenever the judgment was sought to be enforced, whether immediately or ten years thereafter, as in the instant suit.[5]

In *Robinson v. Henderson,*[6] a bankrupt persuaded an associate to sign a note with him as an accommodation maker. After several payments on the note by the bankrupt, he filed a voluntary petition in bankruptcy but did not schedule the note as a debt for which he was seeking discharge. In due course, a discharge was granted to bankrupt, his assets were sold, the pro-

64. See *The Work of the Louisiana Supreme Court for the 1957-1958 Term — Administrative Law,* 19 LA. L. REV. 351, 352-53 (1959).

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1. 158 So. 2d 419 (La. App. 3d Cir. 1963).
2. Pursuant to LA. CODE OF CIVIL PROCEDURE art. 2031 (1960).
3. 8B C.J.S. *Bankruptcy* § 563 (1963).
4. 158 So. 2d at 422.
5. *Id.* at 421.
6. 162 So. 2d 116 (La. App. 3d Cir. 1964).

ceeds distributed, and the proceedings were terminated. Thereafter, demand was made upon the co-signer of the note and having paid, he brought suit against the bankrupt.

Section 17(a)(3) of the Bankruptcy Act provides for the discharge of all provable debts except, among other categories, those which "have not been duly scheduled in time for proof and allowance."[7] Such provision has as its obvious purpose assurance that the bankrupt has afforded his creditor an opportunity to share in the distribution of his assets on pain of being denied the protection of the discharge. However, the provision also has an additional clause which would release the debtor if, despite the failure to schedule the debt, "such creditor had notice or actual knowledge of the proceedings in bankruptcy [in time for proof and allowance]."[8]

It has been suggested that such actual notice should not be regarded as timely if it does not come about, not only in time to permit sharing in dividends, but also in time to marshal any reasons the creditor may have in opposition to the discharge.[9] Here, the co-signer could hardly have failed to know about the bankruptcy proceedings since part of the bankrupt's assets were stored in the co-signer's warehouse and conversations ensued about how the rent was to be paid on the warehouse, presumably during the proceedings. Furthermore, the payee of the note had been informed that "although . . . [the bankrupt] had not scheduled the note he intended to pay it" and payee testified that "he wasn't much concerned about it, in any event, because he had a solvent accommodation endorser."[10] Perhaps the crux of the matter is that the co-signer somehow did not realize that his accommodation liability would continue despite the bankruptcy proceeding; he testified that he was not particularly concerned about "all of this vague information about the bankruptcy proceeding" because "he as an accommodation endorser had not yet been called on to pay the note and he did not understand that he would ever have to pay it."[11] It seems quite unlikely that, had he been aware of his liability, he would have been so unconcerned about the proceeding, which he must have known was going on. Perhaps, rather than the relatively weak factual basis

7. 74 Stat. 409, 11 U.S.C.A. § 35(a)(3) (Supp. 1963).
8. *Ibid.*
9. 162 So. 2d at 119, citing 8 REMINGTON, BANKRUPTCY § 3358 (1955).
10. 162 So. 2d at 117.
11. *Id.* at 117, 118.

used by the court to save the debt, that the evidence "does not with sufficient certainty show the time such knowledge was acquired," there may have been other possible grounds for what seems a good result. One such possibility would be to interpret "actual knowledge" of bankruptcy as equivalent to "due scheduling of a claim" only where the failure to schedule was inadvertent. Such an interpretation might plausibly be within the legislative intent.[12] Here, it seems likely that the failure to schedule was a deliberate act on the part of the bankrupt.[13]

The Fourth Circuit Court of Appeal again had before it a number of cases involving the issue of whether or not a small loan company debt had survived a bankruptcy proceeding because the loan or loan renewal had been obtained by fraud. In two of these cases, the appeals court was satisfied, as found by the trial court, that the requisites of section 17(a)(2) of the bankruptcy act had been satisfied and affirmed.[14] In *CHF Finance Co. v. Smith*,[15] the requirement of a co-signer was again appraised and the rule of *CHF Finance Co. v. Corca*[16] reexamined. In *Corca*, it was held that the naked requirement of a co-signer did not by itself negate the possibility of reliance on the borrower's false financial statement, executed after bankrupt "had been informed of the co-signer requirement." Since the evidence showed a partial reliance on the false statement, this was deemed to save the debt from discharge.[17] Here in *Smith*, however, the loan had been *refused* on the basis of the allegedly false statement and a co-signer *required*; in view of other resources also checked by lender, it was hinted that lender might even be *estopped* to complain of misrepresentation.[18] In any event, the court found the lender's testimony insufficient to show the reliance and misleading necessary for recovery.[19]

The 1960 amendment to section 17(a)(2)[20] of the bankruptcy act provided a happy ending for the lender in *Liberal Fi-*

12. *But see* Bucci v. La Rocca, 21 N.J. Misc. 316, 325-26, 33 A.2d 878, 882-83 (1943).
13. 162 So.2d at 117.
14. Excel Finance Mid City, Inc. v. Chetta, 160 So.2d 304 (La. App. 4th Cir. 1964); United Credit Plan, Inc. v. Seminary, 162 So.2d 807 (La. App. 4th Cir. 1964).
15. 158 So.2d 272 (La. App. 4th Cir. 1963).
16. 152 So.2d 830 (La. App. 4th Cir. 1963).
17. *Id.* at 832.
18. 158 So.2d at 273-74, noting from Excel Finance Mid City, Inc. v. Meilleur, 137 So.2d 503 (La. App. 4th Cir. 1962).
19. *Ibid.*
20. 74 Stat. 409, 11 U.S.C.A. § 35(a)(2) (Supp. 1963).

nance Corp. v. Holley,[21] involving proven false representation in obtaining a loan. It was initially decided by the court that that portion of a loan representing a renewal could not be saved from discharge since no fraud was involved in obtaining it.[22] The presumption was also indulged that the payments made by the bankrupt were intended to be applied on the new debt since, knowing it would survive, he would have the most interest in reducing it.[23] However, on rehearing, the court's attention was called to the 1960 amendment,[24] which saves from discharge not only the original debt incident to obtaining money or property by false representation, but also any extension or renewal of such debt where there was reliance on a false representation in making such extension or renewal.[25] Such reliance was found present in the instant case.[26]

PUBLIC UTILITIES

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In *Morehouse Natural Gas Co. v. Louisiana Public Service Comm'n,*[1] the Louisiana Supreme Court has presumably supplied the definitive solution to a problem case which has been shuttling between Commission, District Court, and Supreme Court for some three and a half years. The case is the relatively unusual one of a profitable gas distribution property sold to another gas distribution company by a carbon black company, not in compliance with any order of a regulatory commission to which it was subject, but in order to avoid becoming subject to such regulatory authority.[2] The company was willing to sell the property for a fraction of its alleged depreciated original cost to accomplish this result and thus to lay the groundwork for a handsome return to the purchasers if the rates could be

21. 157 So. 2d 376 (La. App. 4th Cir. 1963).
22. In Guedry Finance Co. v. McCubbin, 120 So. 2d 298 (La. App. Orl. Cir. 1960), the renewal of an unmatured note was held not to involve property. See cases collected in Comment, 21 LA. L. REV. 645 (1961).
23. 157 So. 2d at 379, citing LA. CIVIL CODE art. 2166 (1870).
24. Commented upon in 21 LA. L. REV. 638 (1961).
25. 157 So. 2d at 379-80.
26. *Id.* at 378.
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1. 245 La. 983, 162 So. 2d 334 (1964).
2. *Id.* at 986, 162 So. 2d at 335.