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Public Law: Discharge in Bankruptcy

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It is well settled that the "equal protection" clause of the United States Constitution only relates to equality between persons. "In the absence of restrictions contained in state constitutions, the legislature may determine within broad limits whether particular laws shall extend to the whole state or be limited in their operation to particular portions of the state. All that the Federal Constitution requires is that they shall be general in their application within the territory in which they operate."[19] A relevant limitation in the Louisiana Constitution prohibits local or special laws "concerning any civil or criminal actions."[20] This provision has been construed as meaning "merely that the Legislature shall not pass a local or special law affecting any particular lawsuit or regulating the trial of lawsuits, civil or criminal, in any particular locality."[21]

Turning more specifically to the problem at hand, Justice Sanders added: "The rich diversities in the land, people, and culture of Louisiana are matters of common knowledge. They have been celebrated in song and story. Many of these are deeply rooted in history. The rural-urban diversity is but one of several that affect trespass laws. The variegated patterns of topography and land-use militate against state-wide uniformity in trespass legislation."[22] In further support of the decision, upholding the statute, the court stressed the fact that there had been "no showing that the relevant conditions and needs in Jefferson Davis Parish are the same as those of other parishes," and stated, "The Court cannot assume the absence of differences when there is no proof."[23]

DISCHARGE IN BANKRUPTCY

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The past term produced, as usual, instances of lenders who asserted that their claims were not affected by a debtor's discharge in bankruptcy, by reason of section 17a(2) of the Bankruptcy Act which provides in part:

19. 16 AM. JUR.2d 894.
20. LA. CONST. art. IV, § 4.
21. State v. McCue, 141 La. 417, 421, 75 So. 100, 101 (1917).
22. 247 La. 631, 637, 173 So. 2d 192, 195 (1965).
23. *Ibid.*

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> "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, . . . except such as . . . (2) are liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit, or obtaining the extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive . . . ."[1]

To bring his debt within this language, a plaintiff must show: "(1) That defendant made false representations; (2) that these representations were made with the intention of defrauding the plaintiff, and (3) that the plaintiff relied upon and was misled by the false pretenses or representations."[2]

In *Max Barnett Furniture Co., Inc. v. Romano*,[3] defendant bought goods on credit and gave plaintiff a financial statement that disclosed total indebtedness of $1580; later defendant became bankrupt and scheduled liabilities amounting to almost $15,000. Plaintiff, however, neglected to show when the scheduled liabilities were incurred, and thus failed in its burden of proving that the financial statement was false.

Blue Bonnet Creamery, Inc. v. Gulf Milk Ass'n, Inc.[4] was a garnishment proceeding where the debter pleaded a discharge in bankruptcy and plaintiff claimed that the debtor had defrauded it by giving worthless checks. It was proved, however, that plaintiff's manager, who was closely familiar with the debtor's financial condition, had insisted that the checks be issued though warned by the debtor that some of them would probably be dishonored. There was no intent to defraud, and any possible presumption[5] of intent to defraud was rebutted by the evidence.

In *Friendly Fin. Discount Corp. v. Hayden*,[6] defendants applied for a loan with which to pay two existing debts to plain-

1. 11 U.S.C. § 35a(2) (1964).
2. DeLatour v. Lala, 15 La. App. 276, 278, 131 So. 211, 212 (Orl. Cir. 1930).
3. 170 So. 2d 700 (La. App. 1st Cir. 1964).
4. 172 So. 2d 133 (La. App. 1st Cir. 1965). For a reference to the litigation at an earlier stage, see *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Discharge in Bankruptcy*, 24 LA. L. REV. 278, 280 (1964).
5. See LA. R.S. 14:71 (1950).
6. 171 So. 2d 717 (La. App. 2d Cir. 1965).

tiff. The "application and financial statement" signed by defendants was filled in by plaintiff's agent and showed only the two debts; spaces for salary and for other income were left blank. The court held that this paper was not a "statement in writing respecting . . . financial condition" within section 17a(2), and that in any event reliance on it by plaintiff had not been proved. In *General Fin. Loan Co. v. Allen*,[7] however, where a financial statement signed by defendant and his wife omitted certain debts and contained the statement in the wife's handwriting: "We have no other debts," the money-lender was allowed to recover.

Section 17a(2) also provides:

> "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, . . . except such as . . . (2) are liabilities . . . for willful and malicious injuries to the person or property of another . . . ."[8]

In *Heyerdale v. Haneman*[9] plaintiff had contracted with defendant for repairs to real estate that plaintiff owned, all material and labor to be furnished by defendant. Before the work was completed, plaintiff paid the contract price, but defendant failed to pay the subcontractors and materialmen, who threatened to file liens against the property. Plaintiff then paid nearly $3,000 to the materialmen and subcontractors and got judgment against defendant for this sum. The judgment was held not to be affected by the subsequent bankruptcy of defendant whose misapplication of funds was a misdemeanor[10] and came within the class of "willful and malicious injuries to the person or property of another."

Section 17a(3) provides:

> "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, . . . except such as . . . (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy . . . ."[11]

7. 165 So. 2d 20 (La. App. 2d Cir. 1964).
8. 11 U.S.C. § 35a(2) (1964).
9. 170 So. 2d 401 (La. App. 4th Cir. 1964).
10. LA. R.S. 14:202 (1950).
11. 11 U.S.C. § 35a(3) (1964).

Lashover v. Audler[12] raised the question whether plaintiff had actual knowledge of the proceedings; his claim had not been scheduled in defendant's bankruptcy and consequently no notice[13] had been received. Defendant testified that in an accidental meeting with plaintiff he "mentioned" that he had "filed bankruptcy," but plaintiff denied that such a conversation had taken place. The court considered that if the conversation took place it imparted no more than knowledge of the bare fact of bankruptcy. " '*Actual knowledge of the proceedings in bankruptcy*' in our opinion consists of more than the knowledge which might result from a casual reference to a bankruptcy in an offhand manner during a conversation attendant upon a chance meeting. It means knowledge of facts at least sufficient to apprise the creditor that a proceeding is actually commenced and where that proceeding is pending."[14] These statements are consistent with a suggestion in *Robinson v. Henderson*[15] that actual knowledge must be "generally equivalent to . . . legal notice," but they seem somewhat generous to the creditor.[16]

Marks v. Demarest[17] and *Huff v. Justice*[18] held that a judicial mortgage subsists on property owned by a bankrupt at the time of his discharge but will not affect property he may later acquire; these cases however established nothing new.[19]

12. 171 So. 2d 834 (La. App. 4th Cir. 1965).

13. "The 'notice' contemplated by the statute is the formal written or printed notice sent to the creditor by the Bankruptcy Court." *Id.* at 835.

14. *Id.* at 836.

15. 162 So. 2d 116 (La. App. 3d Cir. 1964).

16. The problem is discussed, 1 COLLIER, BANKRUPTCY § 17.23 (14th ed. 1964); 8 REMINGTON, BANKRUPTCY § 3357 (6th ed. 1955).

17. 174 So. 2d 160 (La. App. 4th Cir. 1965).

18. 174 So. 2d 164 (La. App. 4th Cir. 1965).

19. See Comment, 34 TUL. L. REV. 768, 776 (1960); Schexnailder v. Fontenot, 147 La. 467, 477, 85 So. 207, 211 (1920).