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# Public Law: Bankruptcy

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# BANKRUPTCY

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## Title of Trustee

*Johnson v. Best Manufacturing Co., Inc.*[1] was a delictual action for personal injuries brought against plaintiff's former employer, its insurer, and a foreman. An exception of no right of action was interposed by the foreman, who alleged that plaintiff had filed a petition in bankruptcy, listing the present action in his schedule of assets, and that the trustee in bankruptcy was thus the proper plaintiff. The exception was overruled by the trial court on the ground that the cause of action had not passed to plaintiff's trustee, and the court of appeal affirmed on a different ground. Section 70a(5) of the Bankruptcy Act provides:

> The trustee of the estate of a bankrupt . . . shall . . . be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this title except insofar as it is to property which is held to be exempt, to all the following kinds of property wherever located . . . (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered: *Provided*, that rights of action ex delicto for libel, slander, injuries to the person of the bankrupt or of a relative . . . shall not vest in the trustee unless by the law of the State such rights of action are subject to attachment, execution, garnishment, sequestration, or other judicial process . . . .[2]

A cause of action for personal injuries is governed by the proviso, and will not pass to the debtor's trustee in bankruptcy unless state law makes it subject to creditors' claims. Whether such a cause of action can be seized by creditors on judicial process in Louisiana is open to doubt. It is true that since 1960 the right to recover damages for personal injuries has been classified as a property right,[3] and that seizure of pending actions is authorized.[4] However, it must be under-

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1. 263 So. 2d 436 (La. App. 1st Cir. 1972).
2. 11 U.S.C. § 110a(5) (1970) (Emphasis added.)
3. LA. CIV. CODE art. 2315.
4. LA. R.S. 13:3864-68 (1950).

stood, as Professor Yiannopoulos has stated,[5] that creditors may seize only actions not strictly personal. The same authority adds:

> For purposes of succession upon death, delictual actions involving claims for personal injuries or wrongful death were considered under Louisiana jurisprudence prior to 1960 as strictly personal . . . . It would seem that these actions, for the same reasons, should be insusceptible of seizure or exercise by creditors. This is the prevailing view in France . . . . Amended Article 2315 of the Louisiana Civil Code declares that causes of action for personal injuries or wrongful death are 'property' rights . . . . It is conceivable, however, that this legislative declaration refers exclusively to the heritability of delictual causes of action and has nothing to do with the rights of creditors.[6]

The court of appeal in affirming, held that although the cause of action had passed to the trustee in bankruptcy, the bankrupt had nonetheless been permitted to continue prosecution of the suit.[7]

### EFFECT OF DISCHARGE

In *Beneficial Finance Co. v. Kramer*,[8] the trial court annulled a default judgment against a discharged bankrupt. The creditor had begun action on a past-due note on October 7, 1970. The debtor received his discharge in bankruptcy on November 6, 1970, and a default judgment was confirmed against him on November 10, 1970. On December 30, 1970 a garnishment was issued to enforce the judgment, and it was not until April, 1971 that the debtor sought dismissal of the garnishment. Where a discharge in bankruptcy is obtained prior to judgment against him, the debtor must plead the discharge as an affirmative defense.[9] If he fails to do so, he may not later use the discharge to bar enforcement of the judgment.[10] The court of appeal accordingly reversed, and the garnishment was reinstated. As the court of appeal noted, bankruptcy here occurred before the effective date of the 1970 amendments to the Bankruptcy Act, which empower courts of bankruptcy to determine the dischargeability of any debt, to render judgment for a non-dischargeable debt

5. 1 A. YIANNOPOULOS, CIVIL LAW PROPERTY § 78 n.123 (1966).
6. *Id.*
7. *See* 4A W. COLLIER, BANKRUPTCY § 70-28 (1971).
8. 270 So. 2d 283 (La. App. 3d Cir. 1972).
9. LA. CODE CIV. P. art. 1005.
10. O'Neill v. D.H. Holmes Co., 232 So. 2d 849 (La. App. 4th Cir. 1970).

and order enforcement, to nullify any judgment as a determination of personal liability on a discharged debt, and to enjoin creditors from suing on, or using any process to collect, a discharged debt.[11]

DEBTS UNAFFECTED BY DISCHARGE

Section 17a(2) of the Bankruptcy Act provides in part:

> 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 an 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 . . . .[12]

Under the 1970 Bankruptcy Act amendments, if a petition in bankruptcy was filed after December 18, 1970, the effect of the discharge in bankruptcy upon particular claims is a matter to be determined by the bankruptcy court. If, however, bankruptcy happened before the 1970 amendments took effect, the issue is still one for the state courts.

Where a creditor brings action on a claim that was properly scheduled in his debtor's bankruptcy and is met with a plea of discharge in bankruptcy, the plaintiff has been required to show: "(1) [t]hat 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."[13]

Cases of this sort naturally turn on an analysis of the facts. Three such cases were considered by Louisiana appellate courts in 1972-73. *Friendly Finance Service-Eastgate, Inc. v. Nelson*,[14] held that the notes in suit were discharged as there had been no intent by the debtor to defraud. *King Finance Company of New Orleans, Inc. v. Howard*[15] held that the note in suit was discharged as the creditor had not relied on the debtor's financial statement. By contrast, in *King Finance Company of New Orleans, Inc. v. Johnson*,[16] where the court found intent by the debtor to defraud and reliance by the creditor on the financial statement, the debt was not discharged.

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11. *See* 11 U.S.C. §§ 32f, 35c (1970).
12. 11 U.S.C. § 35a(2) (1970).
13. Delatour v. Lala, 131 So. 211, 212 (La. App. Orl. Cir. 1930).
14. 271 So. 2d 370 (La. App. 2d Cir. 1972).
15. 265 So. 2d 316 (La. App. 4th Cir. 1972).
16. 265 So. 2d 658 (La. App. 4th Cir. 1972).