Louisiana Law Review

Volume 37 | Number 2
The Work of the Louisiana Appellate Courts for the 1975-1976 Term: A Symposium
Winter 1977

Public Law: Bankruptcy

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PUBLIC LAW

BANKRUPTCY

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CONSEQUENCES OF FILING PETITION

The trustee in bankruptcy, upon his qualification, automatically gets title to the non-exempt property of a bankrupt, with effect from the date the petition in bankruptcy was filed.[1] In *Howard v. General Motors Acceptance Corp.*,[2] after installment purchasers of an automobile became bankrupt and the bankruptcy court approved sale of the automobile by the trustee in bankruptcy to the finance company in full satisfaction of its claim against the bankrupt estate, the finance company owned the car; consequently, peaceful taking of the car by the defendant finance company from in front of plaintiffs' house was not a tortious act, and the trial court's award of summary judgment to defendant was affirmed.

Under Rule 401(a) of the Bankruptcy Rules which became effective on October 1, 1973, the filing of a petition in bankruptcy "shall operate as a stay of the commencement or continuation of any action against the bankrupt, or the enforcement of any judgment against him, if the action or judgment is founded on an unsecured provable[3] debt other than one not dischargeable under clause (1), (5), (6), or (7) of § 17a[4] of the Act."[5] Other paragraphs of Rule 401 provide for relief from the stay at the instance of a creditor. *Witherwax v. Zurich Insurance Co.*[6] involved a third-party demand against one who had become bankrupt and had obtained from the

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1. *See* § 70a, Bankruptcy Act, 11 U.S.C. § 110a (1970).
2. 324 So.2d 834 (La. App. 2d Cir. 1975).
3. *See* § 63, Bankruptcy Act, 11 U.S.C. § 103 (1970).
4. 11 U.S.C. § 35a (1970).
5. *See also* Rule 601(a): "*Stay Against Lien Enforcement.*—The filing of a petition shall operate as a stay of any act or the commencement or continuation of any court proceeding to enforce (1) a lien against property in the custody of the bankruptcy court, or (2) a lien against the property of the bankrupt obtained within 4 months before bankruptcy by attachment, judgment, levy, or other legal or equitable process or proceedings." With reference to clause (2), see § 67a, Bankruptcy Act, 11 U.S.C. § 107a (1970).
6. 315 So.2d 420 (La. App. 3d Cir. 1975).

bankruptcy court a specific stay order which the bankrupt then filed in the pending litigation. The trial court properly stayed the third-party action, and its order was affirmed on appeal.

CONFLICT WITH BANKRUPTCY ACT

Matter of Loftin[7] was an action for reinstatement, with back pay and benefits, by one whose employment was terminated because he had filed a voluntary petition in bankruptcy in violation of a regulation of the Shreveport Fire Department. After his dismissal had been upheld by the Shreveport Municipal Fire and Police Civil Service Board, plaintiff appealed to the district court which ordered his reinstatement with payment of all back wages and benefits. The court of appeal affirmed, holding that the challenged regulation conflicted with the objectives of Congress in the Bankruptcy Act and thus was invalid under the Supremacy Clause. In reaching this result the court relied generally on *Perez v. Campbell*,[8] which struck down a section of Arizona's Vehicle Safety Responsibility Statute providing that an unsatisfied judgment against a motorist was ground for suspension of the motorist's license and registration even though the judgment had been discharged in bankruptcy, and followed *Rutledge v. City of Shreveport*,[9] which had invalidated a rule of the Shreveport Police Department almost identical with the Fire Department rule.

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 . . . willful and malicious conversion of the property of another. . . .[10]

In *Electronic Credit Corp. v. Fairbanks*,[11] an action on promissory notes, plaintiff had financed a retail tire business, taking as security chattel mortgages on merchandise under an agreement that as merchandise was sold payments should be made to plaintiff from the proceeds of sale. In fact, plaintiff neither insisted on such payments nor required that the proceeds be kept in a separate account. Shortly before filing his petition in bankruptcy on April 21, 1969, defendant upon advice of his attorney used cash derived from merchandise sales to pay debts of the business for wages and taxes.

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7. 327 So.2d 543 (La. App. 2d Cir. 1976).
8. 402 U.S. 637 (1971).
9. 387 F. Supp. 1277 (W.D. La. 1975).
10. 11 U.S.C. § 35a(2) (1970) *amending* 11 U.S.C. § 35a(2) (1960).
11. 320 So.2d 281 (La. App. 3d Cir. 1975).

Subsequently he received his discharge in bankruptcy and raised it as a defense against plaintiff, which asserted that defendant's application of the proceeds of its security to other debts was a "willful and malicious injury to the . . . property of another"[12] with the result that plaintiff's claim was unaffected by the discharge. The court of appeal in a well-reasoned opinion concluded that there was no "willful and malicious conversion" on the facts of this case.[13]

PROMISE TO PAY DISCHARGED DEBT

A new promise to pay a debt discharged in bankruptcy is actionable without new consideration,[14] and giving a new note for a discharged debt amounts to such a promise.[15] Discharge in bankruptcy does not extinguish the debt but gives an affirmative defense[16] against its assertion.[17] In Louisiana the discharged debt subsists as a natural obligation[18] which is "a sufficient consideration for a new contract."[19] *Maxwell Motors, Inc. v. Tolar*[20] held that by signing a new note the discharged bankrupt elected to revive the natural obligation.

CHAPTER X SALE WITHOUT APPRAISAL

Exchange National Bank of Chicago v. Spalitta[21] was an action against accommodation guarantors for the balance due on the note of a debtor in reorganization under Chapter X of the Bankruptcy Act, after

12. These words of the statute, as it stood when defendant filed his petition and gained his discharge in 1969, were authoritatively construed to include "willful and malicious conversion." Davis v. Aetna Acceptance Co., 293 U.S. 328 (1934).

13. 320 So.2d at 287. Had defendant become bankrupt after December 18, 1970, the effective date of the 1970 Bankruptcy Act amendments, the question of the effect of defendant's discharge on plaintiff's claim would have been one for the bankruptcy court. *See* § 17c, Bankruptcy Act, 11 U.S.C. § 35c (1970).

14. 1A W. COLLIER, BANKRUPTCY § 17.33 (1971).

15. Booty v. American Finance Corp., 224 So. 2d 512 (La App. 2d Cir. 1969).

16. LA. CODE CIV. P. art. 1005.

17. O'Neill v. D.H. Holmes Co., 232 So.2d 849 (La. App. 4th Cir. 1970). Where, however, a debt was reduced to judgment then discharged in bankruptcy, and the debtor subsequently acknowledged or reaffirmed the debt in what was assumed to amount to a new promise to pay, the creditor could not thereafter enforce his discharged judgment by garnishment but had first to obtain a judgment on the new promise. Homemakers Loan & Consumer Discount Co. v. Arthur, 333 So. 2d 686 (La. App. 4th Cir. 1976).

18. LA. CIV. CODE art. 1757(2).

19. *Id.* art. 1759(2).

20. 330 So.2d 334 (La. App. 2d Cir. 1976).

21. 321 So. 2d 338 (La. 1975).

application of the proceeds of mortgaged properties of the debtor, sold without appraisal under order of the bankruptcy court. Defendants filed an exception of no cause of action for want of the appraisal required by the Louisiana Deficiency Judgment Act.[22] The trial court sustained the exception, and the court of appeal affirmed.[23] The supreme court granted certiorari[24] and reversed, three justices dissenting. Had the principal debtor been in straight bankruptcy, its property could not have been sold without appraisal.[25] The provision requiring appraisal in straight bankruptcy, however, specifically is made inapplicable[26] to Chapter X; and § 116 states that the judge may "authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve. . . ."[27] The majority concluded that application of the Deficiency Judgment Act to sales under Chapter X would frustrate the intent of Congress, impair the uniformity sought by Congress, and interfere with the bankruptcy court's "exclusive jurisdiction of the debtor and its property, wherever located,"[28] and on rehearing this decision was confirmed. The dissent emphasized the strong public policy underlying the Deficiency Judgment Act. Given the paucity—even the absence—of authority,[29] the problem certainly is not free from doubt but the reasoning of the majority supports the result.

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22. LA. R.S. 13:4106, 4107 (1950).
23. 295 So.2d 18 (La. App. 4th Cir. 1974).
24. 299 So.2d 360 (La. 1974).
25. § 70f, Bankruptcy Act, 11 U.S.C. § 110f (1970).
26. § 102, Bankruptcy Act, 11 U.S.C. § 502 (1970).
27. 11 U.S.C. § 516 (3) (1970).
28. § 111, Bankruptcy Act, 11 U.S.C. § 511 (1970).
29. *Bowl-Opp, Inc. v. Larson*, 334 F. Supp. 222 (E.D. La. 1971), a diversity case which held that the Louisiana Deficiency Judgment Act applied to Chapter X sales, was necessarily only a prediction of what the Louisiana courts would decide—a mistaken prediction as it turned out. The supreme court rejected *Bowl-Opp, Inc. v. Larson* and discussed with approval *J. Ray McDermott & Co. v. Vessel Morning Star*, 431 F.2d 714 (5th Cir. 1970), *rehearing en banc*, 457 F.2d 815 (5th Cir. 1972), which held the Deficiency Judgment Act inapplicable in the context of the National Maritime Act.