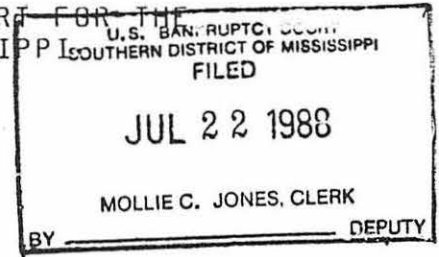


IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



IN RE:

JOEL RALPH McGOWAN AND
TERRI LEE McGOWAN

CASE NO. 8600637JC

RIVER OAKS HOSPITAL

PLAINTIFF

vs.

ADVERSARY NO. 860065JC

JOEL RALPH McGOWAN AND
TERRI LEE McGOWAN

DEFENDANTS

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Jackson, MS 39201

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Attorney for Defendants

Edward Ellington, Bankruptcy Judge

**OPINION AND ORDER ON "OBJECTION TO
DISCHARGE" FILED BY RIVER OAKS HOSPITAL**

An Order for Relief under 11 U.S.C. Chapter 7 was entered on a petition filed by Joel Ralph McGowan and Terri Lee McGowan on March 27, 1986.

On April 21, 1986, this adversary proceeding was commenced by River Oaks Hospital (Plaintiff) filing an objection to the Debtors' discharge under 11 U.S.C. §523(a)(2)(A).

The Debtors filed their "Answer to Objection to Discharge." A hearing was held on the objection, and the Court instructed each side to submit a brief in support of their respective positions.

After reviewing the evidence presented and considering the briefs of counsel, this court finds that River Oaks Hospital has failed to meet its burden of proof under §523(a)(2)(A), and therefore the Debtors' debt to River Oaks Hospital is dischargeable.

STATEMENT OF THE CASE

The Debtor, Joel Ralph McGowan, incurred a debt with River Oaks as a result of treatment of injuries received by the Debtor. As a result of his injuries, the Debtor had a claim for compensation under the Jones Act, 46 U.S.C.A. §688 (West Supp. 1988).

Upon entry into the hospital, the Debtor signed a "Consent for Treatment and Conditions of Admission" form on January 24, 1985. Paragraph number seven covers the assignment of insurance benefits:

7. ASSIGNMENT OF INSURANCE BENEFITS: In the event the patient is entitled to hospital benefits arising out of any policy of insurance patient or any other party liable to patient, said benefits are hereby assigned to the hospital for application on patient's bill, and it is agreed that the hospital may receipt for any such payment

and such payment shall discharge the said insurance company of any and all obligation under the policy to the extent of such payment. The undersigned and patient are jointly and severely responsible for charges not covered by the assignment. State disability benefits are covered where applicable.

The Debtor sought compensation under the Jones Act, and in July, 1985 the matter was settled. The Debtor received a lump sum for settlement of all claims arising from his injuries. The Debtor's part of the settlement money was paid directly to the Debtor, and the Debtor failed to pay River Oaks for his outstanding hospital bills. (Objection to Discharge, Exhibit 1).

The essence of the objection to discharge filed by River Oaks is that the settlement of his Jones Act claim by the Debtor included payment in full of all of his hospital bills and medical expenses; that the Debtor had assigned these hospital benefits to River Oaks; that the Debtor received the money for these hospital benefits which had been assigned to the hospital and then failed to pay it over to the hospital; and, thus the Debtor's hospital bill is nondischargeable under §523(a)(2)(A).

DISCUSSION

Bankruptcy Code Section 523(a)(2)(A) states:

§523. Exceptions to discharge.

(a) A discharge under section 727 ... of this title does not

discharge an individual debtor from any debt--

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

The burden of an objecting creditor is well stated in the case of Hansen v. Drayman (In re Drayman, 77 B.R. 773 (Bankr.C.D.Cal. 1987) wherein the Court said:

Section 523(a)(2)(A) makes nondischargeable a debt "for money, property, or services ... to the extent obtained by ... false pretenses, a false representation, or actual fraud." To establish nondischargeability the complaining creditors must prove that the debtor: (1) made the representation (2) which he (she) knew was false at that time (3) with the intent and purpose of deceiving the creditors (4) on which the creditors relied, and (5) that the creditor sustained a loss as the proximate result of the false representations. (citations omitted.)

77 B.R. at 775.

In the case at bar, the burden is on River Oaks to show that the extension of credit which it made to the Debtor was obtained by false pretenses, a false representation or actual fraud.

If it is the claim of the Plaintiff that the credit was extended to the Debtor because of false

pretenses or false representations, then the Plaintiff must show that any representations by Debtor were false, or known to be false when made, or that the Debtor signed the "Consent for Treatment" form with the intent to deceive the Plaintiff. "(T)he requisite fraudulent intent must be shown to have existed at the time the debtor obtained the money, property, services, or extension, renewal, or refinance of credit." (citations omitted). Car Village Buick-Opel v. DeRosa (In re DeRosa), 20 B.R. 307, 312 (Bankr.S.D.N.Y. 1982).

If it is the claim of the Plaintiff that the credit was extended to the Debtor because of actual fraud, then in order for the court to declare a debt to be nondischargeable for "actual fraud" under §523(a)(2) (A) the Plaintiff must show that:

(1) the debtor made a false representation, (2) with the purpose and intention of deceiving the creditor; (3) that the creditor reasonably relied on such representation, and (4) that the creditor sustained a loss as a result of the representation. The fraud must be positive, not implied; and the creditor must establish each element by clear and convincing evidence. (citation omitted).

Dodson v. Church (In re Church), 69 B.R. 425, 432 (Bankr.N.D. Tex. 1987).

In the case at bar, the Plaintiff has not shown that at the time the "Consent for Treatment" form was signed by the Debtor and the medical treatment was

rendered and credit was extended by the Plaintiff, that it was the result of false pretenses, a false representation, or actual fraud committed by the Debtor.

If the Debtor has committed any "wrong", it may be that the Debtor has converted to his own use money for benefits which he had assigned to the Plaintiff. Under the appropriate facts, conversion of property by the Debtor may result in the nondischargeability of the debt under §523(a)(6). See: Meridian Production Credit Association v. Hendry (In re Hendry), 77 B.R. 85 (Bankr.S.D.Miss. 1987). However, the objection filed by the Plaintiff herein is based on §523(a)(2)(A) and not on §523(a)(6).

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Objection to Discharge filed by River Oaks Hospital is hereby denied.

IT IS FURTHER ORDERED AND ADJUDGED that the Debtors' debt to River Oaks Hospital is determined to be dischargeable.

ORDERED AND ADJUDGED this the 22nd day of July, 1988.


U. S. BANKRUPTCY JUDGE