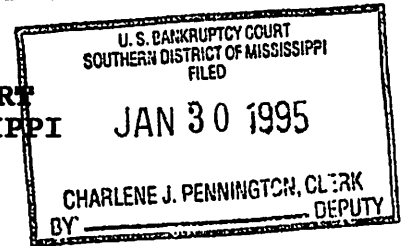


IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE: NANCY MARIE TRUAX

CASE NO. 9207852SC

STEWART-SNEED-HEWES, INCORPORATED  
AND FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND

PLAINTIFFS

VS.

ADVERSARY NO. 9400124SEG

NANCY MARIE TRUAX AND  
J.C. BELL, CHAPTER 13 TRUSTEE

DEFENDANTS

ORDER

CAME ON for hearing before the Court on the *Motion for Clarification and/or to Alter or Amend Opinion and Judgment* filed by William F. Truax, III on December 21, 1994 and on the *Motion of Nancy Marie Truax for Clarification and/or to Alter or Amend Memorandum Opinion and Final Judgment* filed on December 22, 1994, and after having considered said motions and being advised in the premises, the Court finds that the motions are well taken and should be granted.

IT IS THEREFORE ORDERED AND ADJUDGED:

1. That the *Motion for Clarification and/or to Alter or Amend Opinion and Judgment* filed by William F. Truax, III is hereby granted;

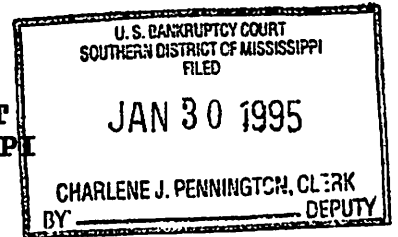
2. That the *Motion of Nancy Marie Truax for Clarification and/or to Alter or Amend Memorandum Opinion and Final Judgment* is hereby granted; and

3. That a separate Amended Memorandum Opinion and Amended Final Judgment will be entered in accordance with this order.

SO ORDERED this the 30<sup>th</sup> day of January, 1995.

  
UNITED STATES BANKRUPTCY JUDGE

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



IN RE: NANCY MARIE TRUAX

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DEFENDANTS

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Edward Ellington, Bankruptcy Judge

AMENDED MEMORANDUM OPINION

This adversary proceeding is before the Court on the  
*Amended Motion of Nancy Marie Truax for Judgment on the Pleadings*

filed pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure. In her motion, Ms. Truax seeks a judgment on the *Bill of Interpleader* filed by Stewart-Sneed-Hewes, Incorporated and Fidelity and Deposit Company of Maryland directing the Plaintiffs to pay the proceeds of a supersedeas bond to her in satisfaction of a final judgment she holds against Gulf Mart Shopping Center, Inc. After considering the arguments of counsel and being otherwise advised in the premises, the Court holds that the motion is well taken and should be granted. In so holding the Court makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

The material facts in this case are not in dispute. In 1988 Ms. Truax obtained a judgment against her former husband, William F. Truax, III. After entry of the judgment, Ms. Truax sought to execute on the judgment by having a writ of garnishment issued to Gulf Mart Shopping Center, Inc. Gulf Mart wrongfully answered the writ of garnishment by falsely stating that Mr. Truax was not receiving any wages from Gulf Mart. As a result of Gulf Mart's wrongful answer to the writ of garnishment, Ms. Truax obtained a judgment against Gulf Mart in the Circuit Court of First Judicial District of Harrison County, Mississippi in January of 1993. Gulf Mart appealed the judgment to the Mississippi Supreme Court and posted a supersedeas bond pursuant to the Mississippi Rules of Civil Procedure and the Mississippi Supreme Court Rules.

The supersedeas bond was issued by Fidelity and Deposit Company of Maryland, through Stewart-Sneed-Hewes, Incorporated, the Plaintiffs in this action in interpleader.

Ms. Truax filed a petition for relief under Chapter 13 of the Bankruptcy Code<sup>1</sup> in March of 1992 and her case is still pending. J.C. Bell is the chapter 13 trustee in her case. In June of 1993, Mr. Truax filed a chapter 7 petition for relief and shortly thereafter commenced an adversary proceeding against Ms. Truax pursuant to § 523(a)(5) seeking a determination of the dischargeability of the judgment held by Ms. Truax against Mr. Truax. The time for completion of discovery in Mr. Truax's §523(a)(5) action has expired but the case has not yet come on for trial.

In April of 1994, the Mississippi Supreme Court affirmed the judgment held by Ms. Truax against Gulf Mart<sup>2</sup>. Since Ms. Truax's chapter 13 case is still pending, the Plaintiffs commenced this adversary proceeding by filing a *Bill of Interpleader* on May 31, 1994. The *Bill of Interpleader* states that the Plaintiffs issued the supersedeas bond with regard to Gulf Mart's appeal to the Mississippi Supreme Court of the judgment held by Ms. Truax. The bill further states that the Mississippi Supreme Court upheld the judgment on appeal, and the Plaintiffs are unsure whether to

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<sup>1</sup> Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

<sup>2</sup> Truax v. Truax, 635 So.2d 909 (Miss. 1994).

pay the proceeds of the supersedeas bond to Ms. Truax or to J.C. Bell, the Chapter 13 Trustee in her bankruptcy case.

J.C. Bell filed a response to the bill of interpleader, stating that he claims no interest in the judgment and consents to payment of the judgment directly to Ms. Truax.

Ms. Truax filed a response to the bill of interpleader, stating that she is entitled to the proceeds of the supersedeas bond.

Mr. Truax also filed a response to the bill of interpleader, claiming that a status quo order should be entered until the dischargeability litigation in his bankruptcy case is concluded. Mr. Truax claims that if his debt to Ms. Truax is discharged under the Bankruptcy Code, then Ms. Truax's judgment against Gulf Mart may be determined invalid. He also claims that if the judgment is paid to Ms. Truax, then Gulf Mart may have a claim for contribution or reimbursement against him, which he would be unable to satisfy. Finally, Mr. Truax asserts that if the judgment is paid, Mr. Truax's chapter 7 estate will lose any interest in the funds.

Ms. Truax filed a motion and an amended motion for judgment on the pleadings, which is presently before the Court. In her motion, Ms. Truax asserts that the response filed by Mr. Truax to the bill of interpleader is without merit, and that the Court should enter a judgment on the pleadings directing the Plaintiffs to pay the judgment amount to her.

### CONCLUSIONS OF LAW

Ms. Truax brings her motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure which is made applicable to adversary proceedings by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure. Rule 12(c) of the Federal Rules of Civil Procedure provides as follows:

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

"In considering a motion for judgment on the pleadings, the trial court is required to view the facts presented in the pleadings and the inferences drawn therefrom in the light most favorable to the nonmoving party." 5A Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1368 (1990).

In his response to the bill of interpleader, Mr. Truax claims that if his debt to Ms. Truax is discharged under bankruptcy law, then, by operation of the discharge, Ms. Truax's judgment against Gulf Mart may be determined invalid. He also claims that if the judgment is paid to Ms. Truax, then Gulf Mart may have a claim for contribution or reimbursement against him, which he would be unable to satisfy. Finally, Mr. Truax claims that if the judgment is paid, Mr. Truax's chapter 7 estate will lose any interest in the funds.

Initially, the Court would point out that Ms. Truax holds a final judgment against Gulf Mart Shopping Center, Inc. By issuing the supersedeas bond in question, the Plaintiffs assumed the status of guarantors of Gulf Mart on the judgment held by Ms. Truax. While payment of the supersedeas bond toward the judgment may give the Plaintiffs, as guarantors of the debt, a claim against Gulf Mart, Gulf Mart is not in bankruptcy. The fact that Gulf Mart might ultimately assert a claim against the bankruptcy estate of William Truax does not give Mr. Truax's bankruptcy estate any interest in the proceeds of the supersedeas bond.

In Edwards v. Armstrong World Industries, Inc., 6 F.3d 312 (5th Cir. 1993), judgment creditors of the debtor sought to enforce a supersedeas bond against the issuing surety. In allowing the judgment creditors to execute on the bond, the court stated:

Supersedeas bonds serve as an obligation on an appellant to insure that an appellee who is deprived of the immediate opportunity to collect his or her judgment will not be prejudiced by the delay.

Allowing appellant to file for bankruptcy and thereby stay execution on the supersedeas bond would eviscerate the very purpose of these bonds. Once the appeal is decided and mandate has issued, the judgment creditor has an enforceable right to collect that which the trial court has previously determined is rightfully his or her own. The supersedeas bond was posted to cover precisely the type of eventuality which occurred in this case, insolvency of the judgment debtor. It is manifestly unfair to force the judgment creditor to delay the right to collect with a promise to protect the judgment only to later refuse to allow the successful plaintiff to execute the bond because the debtor has sought protection under the laws of bankruptcy.

Id. at 319.



In Edwards, the judgment debtor was also a debtor in bankruptcy. In the present case, the judgment debtor, Gulf Mart, is not in bankruptcy. William Truax is in bankruptcy. Mr. Truax claims that because the surety may have a claim against the judgment debtor, Gulf Mart, who may ultimately have a claim against him arising out of the original garnishment, that his bankruptcy estate has an interest in the supersedeas bond. Whether any party may have a claim against Mr. Truax's bankruptcy estate does not affect the Plaintiffs' obligation as guarantors of the supersedeas bond.

Mr. Truax also seems to argue that if his debt to Ms. Truax is discharged in his bankruptcy case, then her judgment against Gulf Mart would be invalid, thereby relieving the Plaintiffs as sureties on the supersedeas bond. Mr. Truax bases his argument on Mississippi case law holding that where an underlying judgment is reversed on appeal or found to be invalid, then a judgment held against a garnishee defendant is also invalid.<sup>3</sup> While the Court does not take exception with Mr. Truax's statement of Mississippi law as far as it goes, his argument is without merit under the facts in this case. There is no assertion that the original judgment of Ms. Truax against Mr. Truax was ever reversed or invalidated. Furthermore, the subsequent judgment

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<sup>3</sup> See, Anderson-Tully Co. v. Brown, 383 So.2d 1389 (Miss. 1980); Copiah Hardware Co. v. Meteor Motorcar Co., 136 Miss. 274, 101 So. 375 (1924); Moody & Williams v. Dye, 125 Miss. 770, 88 So. 332 (1921). See also, Memorandum, Points and Authorities of William F. Truax, III, in Support of His Response to the Bill of Interpleader and in Reply to Nancy Marie Truax's Motion for Judgment on the Pleadings, pp. 3-7.

obtained by Ms. Truax against the garnishee defendant, Gulf Mart, based on the original judgment against Mr. Truax was affirmed on appeal.

Mr. Truax has confused, or seeks to confuse, the effect of a discharge in bankruptcy under §§ 727 and 524 of the Bankruptcy Code with a reversal or annulment of a judgment. The law is well settled that "[a] discharge in bankruptcy does not extinguish the debt itself, but merely releases the debtor from personal liability for the debt." Houston v. Edgeworth (Matter of Edgeworth), 993 F.3d 51, 53 (5th Cir. 1993). Simply because Mr. Truax may no longer be personally liable for a debt because he has obtained a discharge pursuant to bankruptcy law, this does not discharge non-bankrupt third parties from their independent obligations to a creditor. Even if Ms. Truax's claim against Mr. Truax is found to be dischargeable in his bankruptcy case, it does not follow that the underlying judgment which Ms. Truax holds against him is invalid. A discharge would only relieve Mr. Truax from his personal liability for the debt. Gulf Mart is independently liable on the debt pursuant to the terms of the judgment which Ms. Truax holds against it. 11 U.S.C. § 524(e). See, Houston v. Edgeworth (Matter of Edgeworth), 993 F.2d 51, 53-4 (5th Cir. 1993); NCNB Texas National Bank v. Johnson, 11 F.3d 1260, 1266 (5th Cir. 1994); Shure v. State of Vermont (In re Sure-Snap Corp.), 983 F.2d. 1015, 1019 (11th Cir. 1993); Moore, Owen, Thomas & Co. v. Coffey, 992 F.2d 1439, 1449 (6th Cir. 1993); First Fidelity Bank v. McAteer, 985 F.2d 114, 118 (3rd Cir. 1993); Green v. Welsh, 956 F.2d 30, 33

(2nd Cir. 1992); Bursch v. Beardsley & Piper, a Division of Pettibone Corp., 971 F.2d 108, 114 (8th Cir. 1992); Teamsters Joint Council No. 83 v. Centra, Inc., 947 F.2d 115, 121 (4th Cir. 1991); Landsing Diversified Properties-II v. First National Bank and Trust Co. of Tulsa (In re Western Real Estate Fund, Inc.), 922 F.2d 592, 600 (10th Cir. 1990), *reh'g denied and opinion modified*, Abel v. West, 932 F.2d 898; Underhill v. Royal, 769 F.2d 1426, 1432 (9th Cir. 1985).

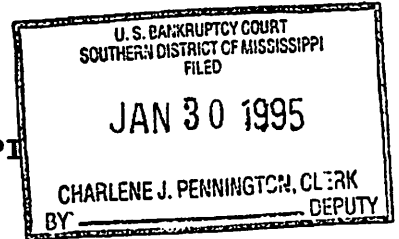
In conclusion, the Court finds that the Plaintiffs, Stewart-Sneed-Hewes, Incorporated and Fidelity and Deposit Company of Maryland, have requested a determination from this Court of the proper payee of the proceeds of the supersedeas bond issued in the appeal by Gulf Mart of the judgment entered in favor of Ms. Truax. J.C. Bell, the Trustee in Ms. Truax's bankruptcy case, has answered the bill of interpleader stating that he claims no interest in the bond proceeds. Mr. Truax has also answered the bill of interpleader, asserting an interest in the bond proceeds. However, when taking all of the facts in a light most favorable to Mr. Truax, the Court finds that he has stated no basis for this Court to find that either he, or his bankruptcy estate, possesses any interest in the proceeds of the supersedeas bond. Therefore, this Court holds that the proceeds of the supersedeas bond should be paid to Nancy Marie Truax in payment against the judgment she holds against Gulf Mart.

A separate judgment consistent with this opinion will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

This the 30<sup>th</sup> day of January, 1995.

  
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
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PLAINTIFFS

VS.

ADVERSARY NO. 9400124SEG

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J.C. BELL, CHAPTER 13 TRUSTEE

DEFENDANTS

AMENDED FINAL JUDGMENT

Consistent with the Court's opinion dated contemporaneously herewith, the Court holds that the *Amended Motion of Nancy Marie Truax for Judgment on the Pleadings* should be and hereby is granted. It is therefore ordered and adjudged that:

1. The Plaintiffs, Stewart-Sneed-Hewes, Incorporated and Fidelity and Deposit Company of Maryland are hereby ordered to pay to Nancy Marie Truax the proceeds of the supersedeas bond issued by the Plaintiffs in connection with the appeal of Gulf Mart Shopping Center, Inc. to the Supreme Court of Mississippi in Supreme Court Case No. 93-CA-0344.

2. This order constitutes a final judgment for the purposes of Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

SO ORDERED this the 30<sup>th</sup> day of January, 1995.

UNITED STATES BANKRUPTCY JUDGE