

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
 :
BERNARD G. WILTFANG and : Case No. 86-146-C H
BERNADINE WILTFANG, d/b/a :
WILTFANG FARMS, : Chapter 7
 :
Debtors, :
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CARROL M. NEARMYER and :
CAROLYN NEARMYER, :
 :
Plaintiffs, :
 :
v. : Adv. No. 86-0114
 :
BERNARD G. WILTFANG and :
BERNADINE WILTFANG, d/b/a :
WILTFANG FARMS, :
 :
Defendants. :
 :

ORDER--MOTION FOR LIMITATION OF EVIDENCE

The final pretrial conference was held on November 13, 1989, and as part of the order Defendants' motion for limitation of evidence was considered as a resubmitted motion in limine without further argument.

On May 14, 1987, the Defendant, Bernard G. Wiltfang, filed his Motion for Limitation of Discovery and Evidence. This motion prayed for an order limiting the scope of discovery and evidence in this proceeding. Said Defendant contended that the complaint, pre-amendment, was based on 11 U.S.C. §523(a)(2)(A) and witnesses disclosed by Plaintiffs had no part in or knowledge of the transaction underlying this case. Defendant alleged that many of these individuals were involved in other transactions involving other

entities.

Plaintiffs represented that they would attempt to show a scheme or course of conduct in order to prove fraud.

On March 29, 1988, this motion was overruled with right to file a motion in limine.

On December 13, 1988, Defendants' objected to Plaintiffs' exhibit and witness list which was served on December 2, 1988, and, alternatively, filed a motion in limine "excluding the witnesses and exhibits or reserving ruling on exclusion until after all witnesses and exhibits concerning the transaction underlying this case are presented."

Defendants contend that referenced witnesses and exhibits should not be tendered because to do so would be a circumvention of a previous order of this Court refusing to consolidate the Nearmyer, Iske and Kline adversary proceedings. Further, these referenced witnesses and exhibits should be excluded because the disclosed witnesses had no part in or knowledge of the transaction underlying this case and the exhibits related to other transactions involving other entities.

Plaintiffs contend that evidence of other wrongs or act is admissible as proof of "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident," pursuant to Fed.R.Evid. 404(b).

The amended complaint alleges claims under 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(6). Therefore, issues of false pretenses,

false representation, fraud, malice, and willfulness are raised. Plaintiffs must prove each element of their claims by clear and convincing evidence.

CONCLUSIONS

A primary purpose of a motion in limine is to obtain a ruling on potentially damaging evidence before the evidence is brought to the attention of the jury. Further, such a ruling excludes evidence until the court has sufficient factual information to make a ruling on the admissibility of evidence which, if admitted, may be highly prejudicial. The court is mindful of the fact that pretrial rulings on motions in limine can drastically alter a party's trial strategy.

Many of these concerns are alleviated when the trial is a bench trial, as in this adversary proceeding. It is anticipated that the court in a bench trial may hear prejudicial evidence during the course of the trial without admitting it as evidence, as a proponent has a right to make an offer of proof pursuant to Fed.R.Evid. 103.

Fed.R.Evid. 404(b) provides for the admissibility of evidence of other crimes, wrongs, or acts. It provides as follows:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

This standard for admitting evidence of "other acts" is as

follows:

Evidence of such other acts is admissible when it is relevant to an issue in question other than the character of the defendant, there is clear and convincing evidence that the defendant committed the prior acts, and the potential unfair prejudice does not substantially outweigh the probative value of the evidence.

Cerro Gordo Charity v. Fireman's Fund American Life Insurance, 819 F.2d 1471, 1482 (8th Cir. 1987).

Permitting the "other act" witnesses to testify may be a partial circumvention of the previous order refusing consolidation, but that order cannot be construed to override a rule of evidence.

Further, since this is a bench trial, Plaintiffs should be given the opportunity to present their evidence with the Court reserving ruling on the admissibility of "other act" evidence until all witnesses and exhibits concerning the transactions underlying this case are presented.

Dated this 12th day of January, 1990.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE