

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, :  
 :  
vs. : Adv. No. 86-0114  
 :  
BERNARD G. WILTFANG and :  
BERNADINE WILTFANG, d/b/a :  
WILTFANG FARMS, :  
 :  
Defendants. :  
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ORDER--JURY DEMAND

This adversary proceeding is before the Court for ruling on Debtor/Defendants' motion to strike jury demand. The following attorneys appeared on behalf of their respective clients: Lawrence L. Marcucci for the Plaintiff; and Wade R. Hauser, III and Elizabeth A. Nelson for the Defendants.

The Court, upon review of the pleadings and arguments of counsel now enters its findings and conclusions pursuant to F. R. Bankr. P. 7052.

FINDINGS OF FACT

1. On January 21, 1986, Debtor/Defendants filed their Chapter 7 petition.
2. On May 13, 1986, Plaintiffs filed an unsecured claim in the case in the amount of \$7,000,000.00.
3. The deadline for filing a section 523(c) complaint to determine the dischargeability of a debt was extended by consent and court order to May 27, 1986.
4. On May 23, 1986, Plaintiffs filed this adversary proceeding. In said complaint, Plaintiffs' legal theory for recovery was under 11 U.S.C. §523(a)(2)(A)--obtaining money, property, or services by false pretenses, a false representation, or actual fraud. Plaintiffs allege the debt owed by Defendants to Plaintiffs is not dischargeable and prayed that the Court deny Defendants' dischargeability on this debt.
5. Plaintiffs filed an application to amend the complaint on June 11, 1987. They prayed that their complaint be amended to include an additional legal theory for recovery under 11 U.S.C. §523(a)(6)--willful and malicious injury by the debtor to another or to the property of another. This application to amend was denied by order filed July 29, 1988. This order was appealed and the appeal is pending.

6. Plaintiffs noticed and filed their jury demand on April 26, 1988. Plaintiffs demand a trial by jury of all the issues in this cause.

7. Defendants filed their motion to strike jury demand on May 16, 1988.

#### DISCUSSION

Plaintiffs/Creditors allege Defendants made fraudulent, false and misleading representations of material fact and fraudulently concealed or failed to disclose material facts in obtaining Plaintiffs' farm assets. Plaintiffs assert that judgment should be rendered in their favor, and pray that the debt owed by Defendants to Plaintiffs is not dischargeable. They thereby assert a claim to part of the bankrupts' estate and assert that they have a right to a share of the estate res.

This Court is an appropriate forum for determining whether Plaintiffs have a right to a trial by jury of the issues in this cause. American Universal Ins. Co. v. Pugh, 821 F.2d 1352, 1355 (9th Cir. 1987).

28 U.S.C. §157(b)(2)(I) provides that determinations as to the dischargeability of particular debts are core proceedings. Historically, a party has no constitutional right to a jury trial in a core proceeding. In re Mansker, 60 B.R. 803, 806 (Bankr.D.Mass. 1986). Further, there is no historical right to a jury trial on the issue of dischargeability. In re Bailey, 75 B.R. 314, 316 (Bankr.M.D.Tenn.

1987). Congress provided in the 1984 Act that all core proceedings are to be determined by summary proceedings. Consequently, when the issue is examined on the basis of a summary/plenary analysis, the conclusion would be that Plaintiffs are not entitled to a jury trial.

However, the test of determining whether Plaintiffs are entitled to a jury trial based on whether the cause of action is one at law or in equity should also be used.

The Seventh Amendment grants the litigants the constitutional right to jury trial in an action at law. A litigant does not have a right to a jury trial where a litigant seeks equitable relief. In re Harbour, 840 F.2d 1165, 1171-1179 (4th Cir. 1988). Historically, bankruptcy proceedings are equitable in nature. Bardes v. Hawarden Bank, 178 U.S. 524, 535, 20 S.Ct. 1000, 1004, 44 L.Ed. 1175 (1900); Katchen v. Landy, 382 U.S. 323, 327, 86 S.Ct. 467, 471, 15 L.Ed.2d 391 (1966).

Congress, in 28 U.S.C. §157(b)(1), declared that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title."

28 U.S.C. §1411 provides as follows:

(a) Except as provided in subsection (b) of

this section, this chapter

and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

- (b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

The Act of 1984 expanded the right of Bankruptcy Courts to hear matters that previously were considered as plenary proceedings and eliminated the expanded jury trial rights of §1480 of the 1978 Act. Harbour, 840 F.2d at 1179.

Plaintiffs have submitted to the jurisdiction of the Bankruptcy Court by filing their claim. They now pray that the Bankruptcy Court protect their claim by declaring it non-dischargeable. Plaintiffs voluntarily became a party to the proceeding and this Court has the jurisdiction to allow or disallow claims and inquire into the validity of the alleged debt. The issue to be tried in this adversary proceeding is equitable in nature and the Seventh Amendment does not give Plaintiffs the right to jury trial.

The fact that Plaintiffs seek monetary relief does not change the action from one in equity to one at law where the monetary relief must necessarily be a part of the equitable remedy. Pugh, 821 F.2d at 1356.

The Court concludes that under either the summary/ plenary

test or the law/equity test, Plaintiffs are not entitled to a trial by jury.

IT IS ACCORDINGLY ORDERED that Defendants' motion to strike the jury demand is sustained and this proceeding shall proceed to trial as a summary proceeding without a jury.

Dated this 29th day of December, 1988.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE