

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of
LYLE L. CARPENTER and . Case No. 86-109-C
JEAN M. CARPENTER, Chapter 7

Debtors.

ORDER- -CONTEMPT

On February 5, 1990, Debtor, Lyle L. Carpenter's Application for Order to Show Cause Why Creditor Should not be Held in Contempt came on for hearing. The following appearances were entered:

Michael P. Mallaney and William B. Serangeli for Debtor Lyle L. Carpenter, and Edward N. McConnell for Intervenor C. Alan Rice.

During the course of the hearing, William B. Serangeli was excused.

This is a core proceeding pursuant to 28 U.S.C. §157(b) (2) (A). The Court, upon review of the pleadings, evidence submitted, and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. Lyle L. Carpenter and Jean M. Carpenter filed a voluntary petition under Chapter 7, Bankruptcy Code, on January 15, 1986.

2. Debtors filed a list of creditors listing persons or entities who held claims. These schedules did not list C. Alan Rice as a creditor.

3. On Schedule B-2(t), Stock Interest Incorporated and Unincorporated Companies, Debtors listed the following: American Commodity Fund, Agri Business Commodity Fund, Carpenter Sales Inc., and C.S.C. Distributing Corp.

4. Debtors did not list an interest in the stock of C&J Leasing Corp., C&J Management Corp., and C&R Publishing Corporation.

5. On April 21, 1987, the Trustee, Robert D. Taha, filed a complaint, Adversary Proceeding No. 87-0077, against Harold E. Carpenter Trust and Harold S. Carpenter, Trustee, as defendants. This complaint was filed to avoid alleged fraudulent transfers pursuant to 11 U.S.C. §§ 544 and 548.

6. Said complaint alleged that Debtors transferred real estate, a future interest in real estate, and their interest in stock in C&J Leasing Corp. to the Defendant Trust. Plaintiff further alleged that there may be other assets which were also transferred to said Trust.

7. Plaintiff Trustee prayed in Count I of said Complaint that said transfer be declared fraudulent and set aside.

8. Plaintiff Trustee alleged in Count II of said Complaint that Debtors transferred their interest in stock of C&J Leasing Corp. for less than reasonable equivalent value while insolvent which would bring this transaction within the purview of 11 U.S.C. §548 (a) (2).

9. Said Defendants, the Trust and Trustee, filed a motion to dismiss the Complaint on the basis that they had transferred the real estate and said stock back to Debtors.

10. On June 21, 1988, the Complaint was amended to include the Debtors, Lyle L. Carpenter and Jean M. Carpenter, as party defendants. The Amended Complaint, in Counts III and IV prayed

that the Debtor/Defendants account for and transfer said property to the Trustee.

11. On November 21, 1989, C. Alan Rice filed a motion to intervene in the adversary proceeding. Said Intervenor alleged that he is a 50 percent shareholder of C&J Leasing Corp., C&J Management Corp., and C&R Publishing Corporation; there is a dispute as to the ownership of the remaining 50 percent interest in said corporations; said stock is subject to an oral buy and sell agreement; an action has been filed in state court; and, Intervenor's interest in the stock needs to be protected.

12. Intervenor filed the Intervention Complaint on the same date, to-wit: November 21, 1989. Said Complaint alleged that Debtors, Lyle and Jean Carpenter, owned a 50 percent interest in the common stock of said corporations and Intervenor is the owner of the remaining 50 percent. Intervenor alleged, upon information and belief, that Debtors transferred their interest in said stock contrary to a buy and sell agreement whereby Intervenor had a first right-of-refusal with respect to Debtors' interest in said stock. Intervenor further alleged that the transfer was made without the knowledge and consent of Intervenor and in violation of the oral agreement between Lyle Carpenter and Intervenor. Intervenor prayed that his interest in said stock be protected.

13. On the same date, November 21, 1989, Intervenor filed a Petition in Iowa District Court, Polk County, with the caption, C. Alan Rice, Plaintiff, v. Lyle L. Carpenter, Defendant, Law No. CL 82-48553. Said Petition alleged that the Plaintiff, C. Alan Rice,

and Lyle L. Carpenter each owned 50 percent of C&J Leasing Corp., C&J Management Corp., and C&R Publishing Corporation. It was further alleged that said parties orally agreed to enter into a buy and sell agreement whereby each agreed to grant each other a first right-of-refusal with respect to their respective interests in stock in said corporations. Intervenor/Plaintiff alleged in multiple counts that Lyle Carpenter breached the oral contract; that Lyle Carpenter made fraudulent representations to Plaintiff/Intervenor; that Lyle Carpenter violated §502.401, I.C.A., the Iowa Uniform Security Act; and that Lyle Carpenter breached a fiduciary duty to Plaintiff/Intervenor. Plaintiff/Intervenor prayed for specific performance, declaratory judgment, and damages, both compensatory and punitive.

14. C. Alan Rice, Intervenor, has known of the pending Carpenter bankruptcy since January 1986.

15. Intervenor never filed a proof-of-claim in the Carpenter Bankruptcy.

16. Intervenor knew of Debtors' discharge prior to filing the state court action.

17. Intervenor advised this Court of the filing in state court at the time of the filing of the motion to intervene and attached a copy of the state court petition.

18. Counsel for Intervenor knew of the Carpenter bankruptcy case and discharge prior to the filing of the state court action.

19. Counsel for Intervenor commenced representation of Intervenor in November 1989, shortly before the filing of the

motion to intervene and the state court petition. Intervenor's prior counsel disqualified themselves when their firm merged with the firm of which counsel for Debtors is a member.

20. Counsel for Intervenor filed the state court action because he was not sure this Court would grant the motion to intervene and counsel was fearful that the time for commencing the action in state court was about to expire.

21. Debtors requested Intervenor to voluntarily dismiss the state court proceeding without Court intervention, but Intervenor refused to do so.

DISCUSSION

The Debtor, Lyle L. Carpenter, has now filed an application for order to show cause why creditor Intervenor, should not be held in contempt. Said Debtor prays that Intervenor be held in contempt of court for commencing the state court action and for failing to voluntarily dismiss said action.

The bankruptcy court has the authority to impose sanctions for violations of the §524 discharge injunction. In re Barbour, 77 B.R. 530 (Bankr. E.D.N.C. 1987). Where there is uncertainty regarding the appropriate action with respect to a debt, the creditor should seek an adjudication in the bankruptcy court. In re Gray, 97 B.R. 930, 936 (Bankr. N.D. Ill. 1989) (citing Burley v. American Gas & Oil Investors (In re Heavitz), 85 B.R. 274, 281 (Bankr. S.D.N.Y. 1988)). A creditor takes a calculated risk, under threat of contempt of §524, where it undertakes to make its own determination of what the discharge in bankruptcy means. Gray, 97

B.R. at 936 (citing In re Batla, 12 B.R. 397 (Bankr. N.D. Ga. 1981); McComb v. Jacksonville Pager Co., 336 U.S. 187 (1949)).

In the matter *sub judice*, Intervenor filed the state court petition without seeking the Court's determination of the applicability of the §524 discharge injunction to Intervenor's state court action. Therefore, counsel for Intervenor and Intervenor acted at their peril and are in contempt. However, under the circumstances, determination of sanctions, if any, should be withheld. Counsel for Intervenor did not commence representation of Intervenor until November 1989, after Intervenor's prior counsel disqualified themselves when their firm merged with the firm of which counsel for Debtors is a member. Because Counsel for Intervenor was fearful that the time for commencing the action in state court was about to expire, counsel for Intervenor filed the state court petition on November 21, 1989, and informed the Court of Intervenor's state court action by attaching a copy of said state court petition to Intervenor's motion to intervene filed November 21, 1989.

IT IS ACCORDINGLY ORDERED:

(1) Debtors' Application for Order to Show Cause Why Creditor Should Not Be Held in Contempt is granted; but the determination of sanctions, if any, shall be withheld: and,

(2) Intervenor's further pursuit of the state court action prior to the Bankruptcy Court's determination of the applicability of the §524 discharge injunction to the state court claim shall constitute contempt punishable by sanctions.

Dated this 11th day of April, 1990.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE