

2021 WL 4823404

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United States Court of Appeals, Eighth Circuit.

IN RE: Barbara A. WIGLEY, Debtor
Lariat Companies, Inc., Appellee
v.
Barbara A. Wigley, Appellant

No. 20-3132

Submitted: May 12, 2021

Filed: October 18, 2021

Synopsis

Background: Judgment creditor which, in connection with its lease of commercial real property to company formed by Chapter 11 debtor's spouse to operate restaurant, had obtained a prepetition state-court judgment holding debtor and spouse jointly and severally liable for certain fraudulent transfers from spouse to debtor that had been made in violation of the Minnesota Uniform Fraudulent Transfer Act (MUFTA), filed adversary complaint, seeking determination that judgment debt was excepted from discharge. The United States Bankruptcy Court for the District of Minnesota, [William J. Fisher, J.](#), entered judgment excepting the debt from discharge. The United States Bankruptcy Appellate Panel for the Eighth Circuit, [Nail, J.](#), [620 B.R. 87](#), affirmed. Debtor appealed.

Holdings: The Court of Appeals, [Wollman](#), Circuit Judge, held that:

[1] although claim was partially disallowed pursuant to Bankruptcy Code provision setting cap on landlords' damages, that did not foreclose argument that the claim should be excepted from discharge, and

[2] creditor's prepetition state-court judgment against debtor and spouse fell within "actual fraud" discharge exception.

Affirmed.


Procedural Posture(s): On Appeal; Judgment.

West Headnotes (10)


[1] Bankruptcy

On appeal from decision of bankruptcy appellate panel, Court of Appeals acts as second reviewing court of bankruptcy court's decision; thus, Court of Appeals reviews bankruptcy court's factual findings for clear error and its legal conclusions de novo.


[2] Bankruptcy

Term "actual fraud," as used in the discharge exception for debts obtained by false pretenses, a false representation, or actual fraud, includes fraudulent conveyances.  11 U.S.C.A. § 523(a)(2)(A).

[3] Bankruptcy

When a debtor transfers property to a third party without adequate consideration, the transfer is deemed a fraud on the debtor's creditors, for purposes of the discharge exception for debts obtained by false pretenses, a false representation, or actual fraud.  11 U.S.C.A. § 523(a)(2)(A).

[4] Bankruptcy

Fraud is "actual," within meaning of discharge exception for debts obtained by false pretenses, a false representation, or actual fraud, if the debtor intended by the transfer to hinder his creditors.  11 U.S.C.A. § 523(a)(2)(A).

[5] Bankruptcy

Although judgment creditor's claim arising from prepetition state-court judgment against Chapter 11 debtor and her spouse for fraudulent transfers from spouse to debtor in violation of Minnesota Uniform Fraudulent Transfer Act (MUFTA), in connection with its lease of commercial

real property to company formed by spouse to operate restaurant, was partially disallowed pursuant to Bankruptcy Code provision setting cap on landlords' damages resulting from debtors' termination of real property leases, statutory cap did not foreclose creditor's argument that the claim should be excepted from discharge under discharge exception for debts obtained by false pretenses, a false representation, or actual fraud. 11 U.S.C.A. §§ 502(b)(6), § 523(a)(2)(A); Minn. Stat. Ann. § 513.41 et seq.

[6] Bankruptcy 🔑

While a “claim” is for the total available under substantive nonbankruptcy law, in contrast, a “cap” merely defines how much of the substantive claim will be “allowed” to be paid by the bankruptcy estate and mandates disallowance of the excess; taken together, the claim and cap yield the “allowed” or “allowable” claim. 11 U.S.C.A. § 502.

[7] Bankruptcy 🔑

Transferee who receives fraudulent transfer with requisite wrongful intent commits “actual fraud,” and any debts traceable to fraudulent transfer are excepted from discharge. 11 U.S.C.A. § 523(a)(2)(A).

[8] Bankruptcy 🔑

Transferee's intent must involve moral turpitude or intentional wrong in order for debt to be excepted from discharge as one for money obtained by debtor's “actual fraud.” 11 U.S.C.A. § 523(a)(2)(A).

[9] Bankruptcy 🔑

Exception to discharge for debts obtained by debtor's “actual fraud” does not cover implied fraud, which describes acts of deception that

may exist without imputation of bad faith or immorality. 11 U.S.C.A. § 523(a)(2)(A).

[10] Bankruptcy 🔑

Judgment creditor's prepetition state-court judgment against Chapter 11 debtor and spouse for fraudulent transfers from spouse to debtor in violation of the Minnesota Uniform Fraudulent Transfer Act (MUFTA), in connection with creditor's lease of commercial real property to company formed by spouse to operate restaurant, fell within “actual fraud” discharge exception; judgment creditor and others creditors had filed suit against spouse when transfers were made, spouse stated he was trying to protect himself, his businesses, and his family when he made the transfers, and debtor participated in the scheme with requisite wrongful intent, as evidenced by debtor and spouse regularly discussing their financial situation and reviewing their accounts together, and stated reason for transfers, namely, estate planning, was belied by their not following their usual practice of consulting with estate planning professionals. 11 U.S.C.A. § 523(a)(2)(A); Minn. Stat. Ann. § 513.41 et seq.

Appeal from the United States Bankruptcy Appellate Panel for the Eighth Circuit

Attorneys and Law Firms

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Mychal A. Bruggeman, Tiede & Grabarski, White Bear Lake, MN, John Lamey, III, Elaine D.W. Wise, Lamey Law Firm, Oakdale, MN, for Appellant.

Before COLLOTON, WOLLMAN, and KOBES, Circuit Judges.

Opinion

WOLLMAN, Circuit Judge.

*1 Debtor Barbara A. Wigley (Barbara) appeals from the judgment of the bankruptcy appellate panel, which affirmed the bankruptcy court's determination that her debt to Lariat Companies, Inc. (Lariat), is excepted from discharge because it was obtained by actual fraud. Barbara argues that the bankruptcy court committed legal and factual errors in reaching that conclusion. We affirm.

I. Background

Baja Sol Cantina EP, LLC, entered into a lease agreement with Lariat in late 2008, with Michael Wigley (Michael), Barbara's husband, personally guaranteeing the company's obligations under the lease. Baja Sol was evicted for failure to pay rent in mid-2010. Lariat thereafter filed suit against Baja Sol and Michael in Minnesota state court, seeking to recover past-due and future-accruing rent. While the lease action was pending, Michael transferred some of his assets—namely, his interest in the Wigleys' joint checking account and his limited partnership interests in Spell Capital Funds II and III—to Barbara. The state court entered summary judgment in favor of Lariat in June 2011, awarding more than \$2 million in damages.¹

Lariat and other creditors thereafter sued Barbara in state court for fraudulent transfer of funds under the Minnesota Uniform Fraudulent Transfer Act, *Minn. Stat. § 513.41 et seq.* Michael eventually was joined in the action. In its October 2013 order, the state court found that Michael had transferred assets to Barbara “with actual intent to hinder, delay, or defraud Lariat; without receipt of reasonably equivalent value in exchange for the transfers; and at a time when M. Wigley was insolvent or became insolvent as a result of the transfers.” The state court entered judgment in favor of Lariat, holding Barbara and Michael jointly and severally liable for more than \$780,000.

Michael filed for Chapter 11 bankruptcy in February 2014. The bankruptcy court applied the landlord cap, *see* 11 U.S.C. § 502(b)(6), to Lariat's claim, to the extent the claim involved the Baja Sol lease termination.² After Michael satisfied the capped claim of \$637,581.07, Barbara moved to vacate the fraudulent transfer judgment. The state court denied the motion in December 2016. Days later, Barbara filed for Chapter 11 bankruptcy.

*2 Lariat filed a claim in Barbara's bankruptcy case for more than \$1 million, which represented the fraudulent

transfer judgment and the interest that had accrued. Over Barbara's objection, the bankruptcy court determined that Lariat's discharged claim in Michael's bankruptcy case did not extinguish Barbara's liability to Lariat. The bankruptcy court concluded that Lariat's claim in Barbara's proceeding arose from a lease termination, however, and thus applied § 502(b)(6)'s landlord cap. *See In re Barbara Wigley*, 951 F.3d 967, 972 (8th Cir. 2020) (affirming the bankruptcy court's judgment and remanding the matter “to the bankruptcy court to enter an order that Lariat has a claim against Mrs. Wigley”). Barbara thereafter satisfied Lariat's capped claim of \$330,886.67.

While Barbara's objection to Lariat's claim was pending, Lariat filed a complaint in bankruptcy court seeking to except its claim from discharge. Lariat argued that Barbara should be required to pay the entire debt (*i.e.*, the fraudulent transfer judgment plus interest) and that the debt should remain with Barbara postbankruptcy, because it was obtained by “actual fraud.” *See* 11 U.S.C. § 523(a)(2)(A). Following a two-day trial, the bankruptcy court entered judgment in favor of Lariat. It found that Michael had transferred assets to hinder, delay, or defraud his creditors; that Barbara had participated in the scheme; and that she had “possessed actual fraudulent intent when receiving the transfers.” The bankruptcy appellate panel affirmed. *In re Barbara Wigley*, 620 B.R. 87 (B.A.P. 8th Cir. 2020).

II. Discussion

[1] On appeal from a decision of the bankruptcy appellate panel, we act as a second reviewing court of the bankruptcy court's decision. *In re Barbara Wigley*, 951 F.3d at 970. We thus review the bankruptcy court's factual findings for clear error and its legal conclusions *de novo*. *Id.*

[2] [3] [4] Section 523(a)(2)(A) excepts from discharge any debt “for money ... to the extent obtained by ... actual fraud.” The term “actual fraud” includes fraudulent conveyances. *See Husky Int'l Elecs., Inc. v. Ritz*, 578 U.S. 356, 359, 136 S. Ct. 1581, 194 L.Ed.2d 655 (2016) (hereinafter *Husky*); *DZ Bank AG Deutsche Zentral Genossenschaft Bank v. Meyer*, 869 F.3d 839, 843–44 (9th Cir. 2017). “[W]hen a debtor transfers property to a third party without adequate consideration, the transfer is deemed a fraud on the debtor's creditors.” *McClellan v. Cantrell*, 217 F.3d

890, 894 (7th Cir. 2000); see [Husky](#), 136 S. Ct. at 1587 (explaining that “fraud” has long been used “to describe a debtor's transfer of assets that ... impairs a creditor's ability to collect the debt”). That fraud “is actual if the debtor intended by the transfer to hinder his creditors.” [McClellan](#), 217 F.3d at 894; see [Husky](#), 136 S. Ct. at 1586 (“[A]nything that counts as ‘fraud’ and is done with wrongful intent is ‘actual fraud.’”).

Barbara first argues that the bankruptcy court erred in excepting Lariat's claim from discharge because doing so nullified the landlord-cap relief she had been granted under 11 U.S.C. § 502(b)(6). Barbara maintains that § 502(b)(6) protects unsecured creditors by “prevent[ing] lessors from receiving windfalls on long-term leases.” See [In re Barbara Wigley](#), 951 F.3d at 972 (citing S. Rep. No. 95-989, at 63 (1978), which cites [Oldden v. Tonto Realty Corp.](#), 143 F.2d 916, 921 (2d Cir. 1944), and states that § 502(b)(6) was “designed to compensate the landlord for his loss while not permitting a claim so large (based on a long-term lease) as to prevent other general unsecured creditors from recovering a dividend from the estate”). Barbara contends that the bankruptcy court improperly excepted Lariat's claim under § 523(a)(2)(A) “to reach an outcome directly in conflict with the specific mandate of § 502(b)(6),” thereby rendering the landlord cap superfluous. Appellant's Br. 22.

*3 [5] [6] Although Lariat's claim was partially disallowed against Barbara's bankruptcy estate under § 502(b)(6), the landlord cap does not foreclose Lariat's argument that the claim should be excepted from discharge under § 523(a)(2)(A).³ As previously stated, Lariat filed a claim for the amount of the fraudulent transfer judgment plus interest. Barbara objected, and the bankruptcy court capped Lariat's claim under § 502(b)(6), which established the amount allowed to be paid from the bankruptcy estate. The application of § 502(b)(6) did not preclude Lariat from seeking to except its claim from discharge under § 523(a)(2)(A), however. See [In re McAlpin](#), 254 B.R. 449, 454–56 (Bankr. D. Minn. 2000) (concluding that a creditor is not necessarily barred from seeking to collect a disallowed claim, if the claim was disallowed based on bankruptcy principles (e.g., § 502(b)(6)) and not on the merits). Accordingly, we conclude that Lariat's claim is excepted from discharge under § 523(a)(2)(A) to the extent that it was obtained by actual fraud. See [Grogan](#)

[v. Garner](#), 498 U.S. 279, 287, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991) (“Congress evidently concluded that the creditors’ interest in recovering full payment of debts in [this category] outweighed the debtors’ interest in a complete fresh start.”).

[7] [8] [9] Barbara argues that the bankruptcy court erred in concluding that she committed “actual fraud.” A transferee who receives a fraudulent transfer with the requisite wrongful intent commits “actual fraud,” and any debts traceable to the fraudulent transfer are excepted from discharge. See [Husky](#), 136 S. Ct. at 1586. The transferee's intent must “involv[e] moral turpitude or intentional wrong.” [Id.](#) (quoting [Neal v. Clark](#), 95 U.S. 704, 709, 24 L.Ed. 586 (1878)). The exception does not cover implied fraud, which “describe[s] acts of deception that ‘may exist without the imputation of bad faith or immorality.’ ” [Id.](#) (quoting [Neal](#), 95 U.S. at 709).

[10] The bankruptcy court did not clearly err in finding that Barbara had received a fraudulent transfer from Michael.⁴ Barbara testified that the Wigleys began experiencing financial difficulties in 2008. By the end of 2010, Lariat and other creditors had filed suit in state court against Michael. The Wigleys had moved from their family home in early 2011, executing short sales on their residence and an adjoining lot. In addition, Lariat had filed its motion for summary judgment in the lease action, which sought more than \$2 million in damages. Accordingly, the Wigleys were in financial distress when Michael transferred his interest in the joint checking account and his interests in the Spell Capital Funds to Barbara in March 2011. The bankruptcy court found their stated reason for the transfer—estate planning—not credible in light of the evidence that the Wigleys had not followed their usual practice of consulting with estate planning professionals, nor were the transfers made in accordance with their ten-year estate planning cycle. Moreover, Barbara later used the funds to pay Michael's creditors, which negated any estate planning benefit. According to the bankruptcy court's findings, when asked whether he had transferred his interests in the Spell Capital Funds in an attempt to avoid collection activities, Michael “emotionally responded, ‘I was trying to protect myself, my businesses[,] and my family. Absolutely, I was trying to protect myself, my businesses, and my family.’ ”

*4 The record also supports the bankruptcy court's finding that Barbara participated in the scheme with the requisite wrongful intent. The Wigleys testified that they regularly

discussed their financial situation and reviewed their accounts together. Barbara testified that she knew that Michael had been sued, and the bankruptcy court fairly inferred that it was “unrealistic that a possible judgment of [more than \$2 million] was not discussed, especially given the impact it would have had on the family's financial condition.” The bankruptcy court also relied on a letter that the Wigleys had submitted to the Internal Revenue Services in 2012, explaining that they were scrambling to cover business expenses and fighting to save their home. The bankruptcy court did not clearly err in rejecting the assertion that Barbara did not understand why the funds were being transferred to her and in finding instead that she decided to protect her husband by receiving the transfers, thereby “help[ing] M. Wigley evade his creditors.” The evidence thus supports a finding that Barbara engaged in a “fraud that ‘involv[ed] ... intentional wrong.’ ” See [Husky](#), 136 S. Ct. at 1586 (quoting [Neal](#), 95 U.S. at 709).

We recognize that the facts of the Wigleys’ fraudulent transfer scheme are not as egregious as the facts presented in other cases. See [id.](#) at 1585 (debtor transferred large sums of

money to other entities he controlled); [McClellan](#), 217 F.3d at 892 (debtor purchased machinery from brother for \$10, sold the machinery for \$160,000, “and she's not telling anyone what has happened to that money”). The bankruptcy court properly applied the law to the facts of this case, however, and the record reflects that the court's findings were not clearly erroneous. Because the evidence supports the findings that Barbara intended to and did commit actual fraud, her fraudulent transfer judgment is nondischargeable under [§ 523\(a\)\(2\)\(A\)](#). See [Husky](#), 136 S. Ct. at 1589 (“If that recipient [of a fraudulent transfer] later files for bankruptcy, any debts traceable to the fraudulent conveyance will be nondischargeable under [§ 523\(a\)\(2\)\(A\)](#).” (internal quotation marks and citation omitted)).

The bankruptcy court's judgment is affirmed.

All Citations

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Footnotes

- 1 Lariat had leased the Baja Sol space to another company in July 2011. Michael did not timely present evidence of a mitigation defense, however, and the state court thus denied his motion to vacate the summary judgment order. The state court found that Michael had made a strategic litigation decision to forego engaging in discovery. Michael did not appeal from the denial of the motion to vacate. See [Lariat Cos., Inc. v. Baja Sol Cantina EP, LLC](#), No. A12-2202, 2013 WL 4404589, at *6 n.3 (Minn. Ct. App. Aug. 19, 2013) (unpublished).
- 2 The bankruptcy court disallowed Lariat's claim against Michael's estate to the extent it sought relief related to the fraudulent transfer judgment, concluding that the fraudulent transfer judgment was duplicative of the judgment awarding damages for breach of lease. See [In re Michael Wigley](#), 533 B.R. 267, 272 (B.A.P. 8th Cir. 2015) (affirming, in relevant part, the bankruptcy court's judgment).
- 3 A claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). As explained in [In re Condor Systems, Inc.](#), 296 B.R. 5, 12 (B.A.P. 9th Cir. 2003):
The *claim* is for the total available under substantive nonbankruptcy law. In contrast, the *cap* merely defines how much of the substantive claim will be “allowed” to be paid by the bankruptcy estate and mandates “disallowance” of the excess. Taken together, the claim and cap yield the “allowed” or “allowable” claim.
- 4 We reject Barbara's argument that the bankruptcy court erred in considering the badges of fraud set forth in Minn. Stat. § 513.44(b). See [Ritchie Cap. Mgmt., LLC v. Stoebner](#), 779 F.3d 857, 863 (8th Cir. 2015) (affirming the bankruptcy court's finding of actual fraudulent intent under the badges of fraud approach); see also [In re Addison](#), 540 F.3d 805, 813–14 (8th Cir. 2008) (concluding that “the bankruptcy court properly

looked to the badges of fraud enumerated in [Minn. Stat. Ann. § 513.44\(b\)](#)” but clearly erred in finding that the debtor had fraudulent intent).

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