

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

CHARLIE B. BROWN, d/b/a  
CHARLIE B. BROWN & ASSOCIATES, Bankruptcy Case No. 90-40427  
d/b/a CHARLIE B. BROWN MAI &  
ASSOCIATES,

Debtor.

OPINION

This matter having come before the Court on a Motion by the Debtor requesting the Trustee to abandon property of the estate in accordance with § 554 of the Bankruptcy Code, and an Objection thereto filed by the Trustee, Charles Jones; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The material facts in this matter are not in serious dispute and are set out, in pertinent part, as follows:

1. The Debtor herein filed for relief under Chapter 7 of the Bankruptcy Code on April 11, 1990.

2. Prior to filing for Chapter 7 relief, the Debtor sold his interest in the business known as Charlie B. Brown, d/b/a Charlie B. Brown, MAI and Charlie B. Brown & Associates, to his son Trace Brown,

on November 1, 1989.

3. Pursuant to the bill of sale entered into between the Debtor and Trace Brown, the Debtor sold:

All inventory, furniture, fixtures, equipment, cash on hand, funds in First National Bank & Trust Company of Carbondale, Illinois, and any and all good will of the business entity of the party of the first part (debtor), subject to purchaser (Trace Brown) paying the additional sum of \$1,900 from fees to be earned by party of the first part as an employee of party of the second part when such funds become available, the assumption of a business note of about \$6,000 at Peoples Bank in Marion, Illinois, and subject to paying operating expenses to end of year owed by party of the first part. (Parentheses added).

4. As of November 30, 1989, there was an account at the First National Bank & Trust Company of Carbondale, Illinois, under the name "Charlie B. Brown & Associates" which bore the Social Security number of the Debtor, which was the number Debtor used as his tax identification number in the subject business. The account had a balance on that date of \$32,674.86.

5. On or about December 15, 1989, Trace Brown, upon the suggestion of his certified public accountant, caused the account at the First National Bank & Trust Company to be changed over to the Social Security number of Trace Brown. It appears that the account number remained the same after this date as did the name on the account of "Charlie B. Brown & Associates."

6. Following the Debtor's filing for bankruptcy relief, the account at the First National Bank & Trust Company was frozen and the

Bank has rejected an attempt by Trace Brown to recover the funds in the account for his benefit.

7. As a result of his inability to obtain the funds in the subject account, Trace Brown has requested, through the Debtor, that any interest that the bankruptcy estate might have in the funds be abandoned such that the Bank will be free to release the funds as requested.

8. As of this date, there has never been an action asserted by the Trustee or any creditor against the funds in the subject account at the First National Bank & Trust Company of Carbondale, Illinois. As a result of the passage of time, the Court can find no cause of action that could be asserted by the Trustee or any other creditor to bring the funds into the Debtor's bankruptcy estate.

9. The Trustee objects to the Debtor's Motion to abandon under the equitable doctrine of "unclean hands," and, as a basis for said objection, asserts that the sale of the business in question encompassing the subject bank account was a fraudulent conveyance such that the Debtor and his son, Trace Brown, cannot take advantage of their own wrongs and obtain the subject funds.

#### Conclusions of Law

Under 11 U.S.C. § 554, one seeking to have property abandoned from the bankruptcy estate has the burden of proof by a preponderance of the evidence to establish the basis for the requested abandonment. In the

instant case, the Court finds that the Debtor has shown that the funds in the account at the First National Bank & Trust Company of Carbondale, Illinois, are of inconsequential value to the Debtor's bankruptcy estate given that, prior to the bankruptcy, said funds were transferred to the Debtor's son, Trace Brown, and that any possible actions by the Trustee or creditors which could be asserted against Trace Brown to relieve him of ownership of said funds has been extinguished by the passage of time. As a result of these facts, there is nothing short of default which would entitle the Trustee in Bankruptcy to possession of the subject funds for benefit of the Debtor's unsecured creditors.

The Trustee cannot and does not contest the fact that the Debtor has established a *prima facie* case for abandonment, given that the subject funds are clearly not property of the bankruptcy estate, nor can any action be asserted which would bring them within that purview; however, the Trustee objects to the abandonment based upon the equitable principle that one seeking equitable relief cannot take advantage of his own wrong, or, as otherwise stated, he who comes into equity must come with clean hands. See: Metcalfe v. Altenritter, 53 Ill. App.3d 904 (5th Dist. 1977) and cases cited therein. Application of the "clean hands" doctrine is a matter for the sound discretion of the Court. Cahokia Sports Service, Inc. v. Illinois Liquor Control Commission, 31 Ill. App.3d 801 (5th Dist. 1975). The Court finds that,

once the Debtor established a *prima facie* case for abandonment, the burden then shifted to the trustee to show that the Debtor should not obtain the relief requested due to the Debtor's own guilt of misconduct, fraud, or bad faith. In this regard, the Trustee has attempted to show that the sale of the Debtor's business, on or about November 1, 1989, was a fraudulent conveyance in that the value of the business was substantially in excess of the actual cash consideration of \$1,900. As was stated above, the Trustee cannot assert a fraudulent conveyance action affirmatively, rather he has to use it defensively to establish that the Debtor had "unclean hands."

In considering the Trustee's arguments, the Court finds that the Trustee has failed to show that the November 1, 1989, transaction between the Debtor and his son amounted to a fraudulent conveyance. In this regard, the Court finds that, while the Trustee did show that the Debtor sold his son some assets of value, including inventory, office furniture, fixtures, equipment, cash on hand, and the funds which are the subject of this discussion, the evidence also shows that the Debtor's son assumed numerous liabilities of the business which may have been in excess of the assets. On this point, the Court must find that the Trustee has failed to meet his burden of proof by a preponderance of the evidence that the cash price of \$1,900 paid for the sale of the subject business was wholly inadequate consideration. The evidence indicates that the Debtor was not making a substantial

amount of money from the business in question, nor has his son made a substantial amount of money in the business since the date of the sale, which lends support to a finding that the business likely had a very minimal value on the date of the sale such that the price paid was a fair and reasonable price. Given that the Trustee has failed to show that the purchase price was inadequate consideration for the transfer of the business, the Court is unable to find that there was a fraudulent conveyance between the Debtor and his son as a result of the November 1, 1989, sale of Debtor's former business. There has been no other evidence introduced suggesting that the Debtor is guilty of any other type of fraud, bad faith, or misconduct. As such, the Court finds that the Debtor's Motion for abandonment must be granted in that the bankruptcy estate has no tenable interest in the subject funds in the account of the First National Bank & Trust Company of Carbondale, Illinois.

ENTERED: November 9, 1994.

          /s/ Gerald D. Fines            
United States Bankruptcy Judge