

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ILLINOIS

In Re )  
 ) In Bankruptcy  
MAX WAYNE WATKINS, )  
aka Max W. Watkins, ) No. 94-50820  
aka M.W. Watkins, )  
aka Max Watkins )  
 )  
Debtor. )  
 )  
 )  
----- )  
 )  
CARPENTER & JOHNSON, P.C., )  
a Colorado corporation and )  
as assignee of )  
CRAIG C. JOHNSON, assignor, )  
 )  
Plaintiffs, )  
 )  
v. ) Adversary No. 95-5005  
 )  
MAX WAYNE WATKINS, )  
aka Max W. Watkins, )  
aka M.W. Watkins, )  
aka Max Watkins, )  
 )  
Defendant. )

O P I N I O N

The issue before the Court is whether the Defendant obtained legal services from the Plaintiff through fraud or false pretenses so as to render a debt nondischargeable pursuant to 11 U.S.C. 523(a)(2)(A).

In 1991, the Defendant, Max Watkins, began work for Michael Dean and Artelec Occidente, S.A., a Mexican Corporation, as a commission agent. Mr. Watkins' job was to procure loans for Artelec, and he was paid on a commission basis. Michael Dean was the president of Artelec. Michael Dean is also known as Mitchell Aboumrad. Mr. Dean has dual citizenships in Mexico and the United States; he goes by the Aboumrad name in Mexico and the Dean name in

the United States.

In early 1991, Mr. Watkins procured a loan for Artelec which resulted in a \$40,000.00 commission. Mr. Watkins personally received \$20,000.00, and the other \$20,000.00 went toward certain obligations which Mr. Watkins' family in California had to Mr. Dean.

In September, 1991, Mr. Watkins went to Denver, Colorado, in an attempt to arrange a loan for Artelec. The prospective lenders were identified by Mr. Jeff Kob and Mr. David French. The loan was to be secured by Mexican National bearer bonds with a face value of \$80,167,208.33. Mr. Watkins anticipated a \$500,000.00 commission if this deal was consummated.

Craig Johnson is a lawyer in Colorado. He was retained by Mr. French in early 1991 at a rate of \$125 per hour. In September 1991, Mr. Watkins and Mr. Kob hired Mr. Johnson to perform certain legal services for Artelec involving the Mexican bonds. In particular, Mr. Johnson was asked to assist in opening a safekeeping account for the bonds.

On September 27, 1991, Mr. Johnson met with Mr. Dean, Mr. Watkins, and Mr. Kob at a Denver bank, and the bonds were placed in a safe deposit box. Mr. Dean and Mr. Johnson each retained one of the two keys to the lock box. The bank subsequently informed Mr. Johnson that the bonds could not be held in the lock box. Mr. Dean and Mr. Johnson removed the bonds within a few days of the opening of the account at the bank.

Mr. Johnson testified that his original agreement with Mr. Watkins was to work at an hourly rate of \$125 per hour. This arrangement was later amended to a flat fee of \$25,000.00, then raised to \$27,000.00.

Mr. Johnson testified that he was to be paid regardless of whether the deal went through. Mr. Watkins testified that the fee arrangement was contingent on the loan closing.

On October 1, 1991, Mr. Johnson sent a letter to Mr. Kob and Mr. Watkins which outlined his understanding of the fee arrangement. The letter stated in pertinent part as follows:

It is agreed that I shall receive the sum of \$5,000.00 (U.S.) per day each business day (Monday through Friday) beginning September 26, 1991 through the date of closing. The minimum guaranteed fee to be paid to me by no later than October 7, 1991 or closing, whichever occurs first, is \$25,000.00 (U.S.). If closing is delayed solely to my schedule, then you shall not be assessed fees for each day's delay. Any delay in closing not caused solely by my schedule will not abate the \$5,000.00 (U.S.) per day fees incurred. You will further reimburse me for any out-of-pocket cost, which at the time of this letter agreement, are \$40 (?) and any other additional out-of-pocket costs that may be incurred prior to closing.

The fees agreed to herein shall be paid to me no later than October 7, 1991, regardless of whether closing occurs or not.

The letter further provided that by signing the letter the parties would make this a binding contract controlled by Colorado law. No one signed the agreement.

Mr. Watkins stayed at the Cherry Creek Inn while he was in Denver. Mr. Johnson provided his credit card as a guaranty for Mr. Watkins' hotel bill. At one point, Mr. Watkins needed money to make a trip back to his home in Illinois, and Mr. Johnson loaned him \$500.

The loan never closed. Accordingly, neither Mr. Kob nor Mr. Watkins were compensated for their efforts. Mr. Watkins did not pay Mr. Johnson's attorney's fees and he did not repay the \$500 he borrowed

from Mr. Johnson.

Mr. Johnson continued to work for Mr. Dean after the collapse of the first proposed loan. Mr. Dean agreed to pay Mr. Johnson if another deal was consummated or the bonds were negotiated with the Mexican government.

On November 1, 1991, Mr. Johnson sent a bill to Artelec to the attention of Mr. Aboumrad for \$7,841.91. Bills were also sent on December 28, 1991, for \$7,933.41, on January 28, 1992, for \$8,002.90, and on February 28, 1992, for \$8,081.00. These bills were not paid.

Mr. Johnson did not send any bills to Mr. Watkins. However, in July 1992, Mr. Johnson filed suit against Mr. Watkins in the Colorado state court for \$27,500.00. The complaint alleged breach of contract for legal services and nonpayment of the personal loan. Judgment was entered in favor of Mr. Johnson in the amount of \$27,500.00 on March 19, 1993.

Mr. Watkins filed a petition pursuant to Chapter 7 of the Bankruptcy Code in 1994, a little over six years after his previous Chapter 7 bankruptcy. The Plaintiff, Carpenter and Johnson, P.C., is the law firm of Mr. Johnson, and Mr. Johnson has assigned his claim to the Plaintiff. The Plaintiff has filed a timely complaint to determine dischargeability of debt. The Plaintiff alleges that the Debtor obtained legal services from Mr. Johnson through fraud or false pretenses in violation of 11 U.S.C. § 523(a)(2)(A). The Defendant denies the allegations of the complaint.

Under 11 U.S.C. § 523(a)(2)(A), the debtor may not be discharged "from any debt ... to the extent obtained by... false pretenses, a false representation, or actual fraud..." In order to establish

nondischargeability under this section, the creditor must prove, by a preponderance of the evidence that: (1) the debtor made a statement either knowing it to be false or with reckless disregard for the truth; (2) the debtor possessed an actual intent to deceive the creditor; and (3) the creditor actually relied upon the misrepresentation. In re Mayer, 51 F.3d 670 (7th Cir. 1995); In re Maurice, 21 F.3d 767, 774 (7th Cir. 1994); In re Scarlata, 979 F.2d 521, 525 (7th Cir. 1992); In re Kimzey, 761 F.2d 421, 423 (7th Cir. 1985).

The Plaintiff alleges that the Defendant made the following false representations:

- a) That the Defendant was employed by Artelec and by Michael Dean, its president.
- b) That the Defendant had conducted a number of similar transactions in the past.
- c) That the Defendant was worth a lot of money, his yearly income extensive and over \$200,000.00 per year, and that his financial situation was sound.
- d) That the Defendant would pay the Plaintiff for his services, no matter what happened.
- e) That the Defendant would pay a total of \$27,000.00 for Plaintiff's services.
- f) That the Plaintiff would be given future employment with the Defendant and Artelec.
- g) That the Defendant would repay the \$500.00 loan.

The Defendant did not falsely represent that he was an employee of Artelec. While Mr. Dean testified that the Defendant was not an "employee" of Artelec, Mr. Dean admitted that the Defendant worked for Artelec "on a commission basis". Clearly, all of the Defendant's efforts in Denver were for the benefit of Artelec. To say that the

Defendant was not employed by Artelec is merely to quibble over semantics.

The Plaintiff argues that the Defendant falsely stated that he had conducted a number of similar transactions. The evidence showed that the Defendant has closed one prior transaction in July 1991, for which he received a \$40,000.00 commission from Artelec. The Court does not find this to be a material misrepresentation. The fact that the Defendant had closed a prior loan transaction is the important point. There was no evidence that the Plaintiff asked the Defendant about the number of transactions.

The Plaintiff next alleges that the Defendant misrepresented his net worth and yearly income. Assuming the Defendant made these representations, there were a number of red flags which should have alerted the Plaintiff to the truth of the Defendant's financial condition. See, In re Mayer, 51 F.3d at 676. For example, Mr. Johnson had to use his own credit card to guaranty the Defendant's hotel room. In addition, the Defendant was so broke that he had to borrow \$500 from Mr. Johnson in order to go home for the weekend. Under these circumstances, the Plaintiff should have known or suspected the truth. Any misrepresentation by the Defendant as to his financial status was not material and did not play a causal role in the deception.

The Plaintiff alleges that the Defendant misrepresented that the Plaintiff would be given future employment with the Defendant and Artelec. In fact, Mr. Johnson did continue to do work for Mr. Dean and Artelec after the original deal fell through and the Defendant dropped out of the picture. The Court is confident that the Plaintiff would

have continued to get work from Artelec if any of these deals had gone through. Since none of these deals ever closed, the Court is equally confident that the Plaintiff is now happy not to be doing any work for Artelec.

The Plaintiff's remaining allegations are that the Defendant said that he would pay for Mr. Johnson's legal services and repay the \$500 loan, and then did not do it. All clients who come into a law office say that they can and will pay for legal services. However, not every client is guilty of fraud when the bill goes unpaid. The Plaintiff certainly realized that there was a risk of nonpayment in this case, and this risk is reflected in the generous fee arrangement which is more than three times Mr. Johnson's normal hourly billing rate. This is a case where everyone got a little greedy when they started talking about the big money involved in the deal. Questions which might be asked in a normal case were not asked here because everyone was blinded by the money involved. If the deals had closed, there would have been enough money for everyone and everyone would have been paid. When the deals did not close, there was no money to pay anyone. The Defendant's promises to pay the Plaintiff for legal services and to repay the loan were simply that - mere promises. This is not a case of fraud.

Finally, the Court notes that there was confusion as to the real client in this case. Mr. Johnson was originally retained by Mr. French. In September 1991, Mr. Johnson began working for Mr. Kob and Mr. Watkins. Later, Mr. Johnson worked for Mr. Dean and Artelec. It does not appear that Mr. Watkins ever signed an agreement with Mr. Johnson. The only bills sent by Mr. Johnson in this matter were to Mr. Aboumrad and Artelec. It is not clear why the Plaintiff elected to

pursue the Defendant rather than Mr. Kob, Mr. Dean, or Artelec for payment for the legal services.

For the foregoing reasons, the Complaint to Determine Dischargeability of Debt is denied.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: July 19, 1995

/s/ LARRY LESSEN  
UNITED STATES BANKRUPTCY JUDGE

xc: John C. Haynes  
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Lynn M. Travis  
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#### CERTIFICATION OF MAILING

The undersigned, deputy clerk of the United States Bankruptcy Court, hereby certifies that a copy of this Opinion and order were mailed this date to the parties listed herein.

Dated: July 19, 1995

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