
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
)
LARRY ALLEN DENNIS) Chapter 7 Case
)
) Number 93-40713
)
Debtor)

**ORDER ON DEBTOR'S OBJECTION TO CLAIM OF
GEORGE AND MARY LOU BARNETT**

The Trustee in the above-captioned case filed his Application for Final Compensation and Reimbursement of Expenses and Notice of Proposed Distribution of property of the estate on February 6, 1997. Upon review of the file it appears that the Debtor's Objection to the Proof of Claim filed by George and Mary Lou Barnett has not been the subject of a final order. That objection was filed September 29, 1995, and a response by the claimants was filed November 27, followed by a supplemental response on December 15, 1995. The matter was originally scheduled for a hearing on November 28, 1995, and continued. A continued hearing was scheduled for January 4, 1996, and again continued, at the request of the Trustee, to March 25, 1996. On March 19, 1996, George and Mary Lou Barnett filed a Motion to Continue the hearing further and it was rescheduled for April 22, 1996. On April 16, 1996, Debtor filed a Motion to Continue the

hearing and the matter was rescheduled for May 6, 1996. The parties again requested time to engage in discovery and this Court then entered an Order on June 28, 1996, permitting the parties until July 15 to conclude discovery. That Order also provided that a continued hearing would be scheduled following the conclusion of discovery.

Then on October 9, 1996, the Trustee filed an Application for Leave to Sell the farm which has been the subject of litigation in James L. Drake, Jr., Trustee, v. Larry Dennis II and Tammy Ann Dennis, Adversary Proceeding No. 93-4147, whereby a fraudulent conveyance to the Debtor's son was set aside and the property was vested in Debtor's estate. Debtor filed a motion to stay the sale of the farm, along with other pleadings, and a hearing to consider both motions was conducted on November 25, 1996. This Court granted the Trustee's application by Order dated November 27, 1996. Debtor filed a motion to reconsider or vacate that Order on December 5, and on December 6 this Court entered an Order denying Debtor's motion to reconsider or vacate.

Although no formal notice reassigning a hearing on the Debtor's objection to the claim of George and Mary Lou Barnett was issued, the motion to stay the sale of the farm, and other pleadings filed by the Debtor, together with the evidence taken at the hearings thereon, incorporated the substance of the Debtor's current objection.¹

¹ Debtor, proceeding *pro se*, filed his objection on September 29, 1995, asserting that "such claim was filed in bad faith against the debtor and was excessive an amount by subsequent testimony of George Barnett. Further, the judgment upon which the claim was based is a default judgment rendered by a Kentucky Court

Specifically, during the hearing of November 25, 1996, Debtor contended that the sale of the farm should be stayed in part, because the claim of George and Mary Lou Barnett was excessive in amount. The reasons then set forth in his pleadings and elaborated on through his testimony and argument included the same contentions, and the same exhibits, as those previously attached to Debtor's objection. See Defendant's Motion for Relief from Order Entered on October 4, 1994, Ch. 7 Case No. 93-40713, Adv. Proc. 93-4147, Doc. No. 63, July 21, 1995; Defendant's Second Motion for Relief from Order Entered on October 4, 1994, Ch. 7 Case No. 93-40713, Adv. Proc. 93-4147, Doc. No. 94, Nov. 14, 1996 (Exhibits N & AA); Debtor's Motion to Stay Sale of Farm, Ch. 7 Case No. 93-40713, Doc. No. 84, Nov. 14, 1996 (Exhibits N & AA); Defendant's and Debtor's Motion to Reconsider or Vacate the Court's Order on Defendant's and Debtor's Motion for Relief Order Entered October 4, 1994, and November 27, 1996, Ch. 7 Case No. 93-40713, Doc. No. 93, Dec. 5, 1996. This Court, in its Order dated November 27, 1996, ruled on the validity of the Barnett claim holding as follows:

without sufficient service of process and is not entitled to full effect of this Court."

Defendants contend that George Barnett has defrauded them in at least two distinct ways: first, by misstating the amount of the debt owed by Larry Allen Dennis in his proof of claim and second, by conveying to Larry Allen Dennis approximately 100 acres less than the amount described in his deed. After weighing the evidence, I find any allegation of fraud relating to the Barnett claim to be impermissible collateral attack on a valid judgment of a court of competent jurisdiction which I cannot entertain. The debt to Barnett had been as of 1990, reduced to judgment in Robertson Circuit Court, Kentucky, in the principal amount of \$35,321.21 (Exhibit P-26). Any claims against Barnett affecting the validity or amount of that deficiency judgment must be addressed to that Court. Finally and conclusively, as mentioned above, Rule 60(b) expressly prohibits commencement of a motion under the fraud subclause more than one year after the Final Judgment is rendered. Accordingly, any relief under Rule 60(b)(3) is denied. (footnote omitted).

Order Denying Defendants' and Debtor's Motion for Relief from Order Entered on October 4, 1994, Motion to Stay Sale of Farm (93-40713) and Motion to Stay Sale of Farm (93-4147), Ch. 7 Case No. 93-40713, Doc. No. 89, slip op. at 15-16 (Bankr.S.D.Ga., Nov. 27, 1996) (Davis, J.). Additionally, in the Order of December 6, 1996, this Court held as follows:

The Court has held previously that Mr. Barnett's claim, evidenced by a judgment rendered by a Court of competent jurisdiction in the State of Kentucky, cannot be attacked or set aside by this Court. Debtor clearly believes that he does not owe the entire amount of the judgment rendered in favor of

Mr. Barnett. However, the judgment is of record; it is for a sum certain; and the Debtor admitted that he has paid nothing on or toward the Barnett judgment since it was rendered (Transcript pp. 74-75). The Barnett claim will not be relitigated in this Court. This contention is insufficient to form a basis for reconsideration of this Court's Order (emphasis added).²

Order on Defendants' and Debtor's Motion to Reconsider or Vacate the Court's Order on Defendants' and Debtor's Motion for Relief from Order Entered on October 4, 1994, Motion to Stay Sale of Farm (93-40713) and Motion to Stay Sale of Farm (93-4147), Ch. 7 Case No. 93-40713, Doc. No. 94, slip op. at 6 (Bankr.S.D.Ga., Dec. 6, 1996) (Davis, J.). Counsel for George and Mary Lou Barnett, on December 5, 1996, filed a motion seeking an order of this Court overruling the Debtor's objection to the Barnett claim. No hearing has been scheduled on that matter, but having reviewed the various Orders of the Court, and the contentions set forth in Debtor's Objection to the claim of the Barnetts, I find that the Debtor's objection should be and the same is hereby overruled, consistent with this Court's previous orders.

The claim of George and Mary Lou Barnett is founded on a judgment of the Robertson Circuit Court of Kentucky in the amount of \$35,321.21 dated October 13, 1987, together with accrued interest thereon through the date the Debtor filed his case, the

² Debtor contends that he was not given credit for 1983 payments that occurred prior to the 1987 judgment, but did not contend that he made any payment to Mr. Barnett post-judgment.

same amounting to \$58,790.00 which is the amount sought when the Barnett's filed their claim. There has been no evidence that this judgment has been set aside. I have ruled that it is entitled to full faith and credit and accordingly without any evidence showing payment in cash or certified funds by Debtor to Mr. or Mrs. Barnett which payment has been accepted and negotiated by the Barnetts and which was made subsequent to the date of Mr. Dennis' trial testimony, that being July 20, 1994, the claim of the Barnetts is allowed and Debtor's objection is hereby overruled.³

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of February, 1997.

³ On July 20, 1994, Mr. Dennis admitted through sworn testimony in the presence of this Court that he had made no post-judgment payments to Mr. Barnett.