

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

FILED

Dec 6 12 33 PM '96

U.S. BANKRUPTCY COURT  
SAVANNAH

In the matter of: )  
)  
LARRY ALLEN DENNIS )  
(Chapter 7 Case 93-40713) )  
)  
*Debtor* )  
)  
)  
)  
JAMES L. DRAKE, JR., )  
TRUSTEE )  
)  
*Plaintiff* )  
)  
)  
)  
v. )  
)  
LARRY DENNIS II )  
TAMMY ANN DENNIS )  
)  
*Defendants* )

Adversary Proceeding  
Number 93-4147

**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)  
ENTERED ON NOVEMBER 27, 1996**

The above Motion was filed on December 5, 1996, and has been duly considered. After review of all of the contentions in the Motion and the entire record

in this case, the Motion is denied. The Motion sets forth a number of separate grounds which are treated separately herein.

1) The contention that actions of prior counsel were fraudulent or ineffective.

Negligence or misconduct of counsel was discussed previously and dealt with in this Court's Order entered November 27, 1996, at pages 16-20. The contentions raised by Debtor do not show any grounds on which the Court should reconsider those findings and they are therefore reaffirmed herein.

2) The contention that Debtor owed the Bourbon Agricultural Bank \$66,219.00 on February 20, 1990, rather than \$84,751.00 as previously found by this Court.

This contention was raised previously and fully discussed in this Court's Order entered November 27, 1996, at pages 14-15, and those findings are hereby reaffirmed.

3) The contention that the Court refused to consider assets in the amount of \$59,524.10 in determining whether Debtor was insolvent on February 20, 1990.

Clearly, no legal reason exists for the Court to reconsider its failure to assign any value to those assets which the Debtor now alleges were owned on the relevant date. If the Court's Order of October 4, 1994, was in error, the proper avenue for challenging that error was through a direct appeal. Additionally, there is no basis

under Rule 60 to reconsider those findings at this time. First, in light of the fact that Debtor relies on his own deposition, which was taken on July 21, 1993, the contention that these assets should have been considered by the Court does not qualify as newly discovered evidence, but was known to the parties at the time the case was tried on July 20, 1994. Second, Rule 60(b) only permits a motion of this kind within one year of the judgment or order. *See* Fed.R.Civ.P. 60(b)(2) (“motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken”). Accordingly, this contention of the Debtor is denied.

- 4) The contention that the Court should have credited the Debtor with \$29,015.00 represented by an account receivable owed by Ed Peterson to the Debtor.

The Court considered this issue in the original Order entered October 4, 1994, and found that the Peterson account was uncollectible and therefore was not included in the calculation as to whether the Debtor was insolvent on February 20, 1990. Debtor now argues that he “expected to be paid” this amount of money by Mr. Peterson, or others on his behalf, and that the Court should not have considered the fact that the debt later proved to be uncollectible. At trial, Debtor admitted that the sum of \$29,015.00 owed by Mr. Peterson proved to be uncollectible (Transcript pp.79-80). This contention again constitutes a direct attack on the judgment which can only

be raised as part of a timely, direct appeal. There is no newly discovered evidence within the meaning of Bankruptcy Rule 9024 and this Court's previous holding that the Peterson account, being uncollectible, could not be considered in determining Debtor's solvency cannot now be reconsidered.

- 5) The contention that a 1988 Toyota truck valued at \$8,000.00 should be credited in determining his insolvency on February 20, 1990.

This contention is not well-founded not only because Debtor has not shown any newly discovered evidence on this point but also because an examination of the entire transcript of the trial clearly shows that the Debtor admitted the value of his vehicles as being \$32,100.00 (Transcript p.86). During the trial, Debtor clearly acknowledged that this value consisted of the combined values of the 1989 pickup, the 1990 pickup, and the 1986 pickup, and the 1988 Toyota truck was not mentioned (Transcript p.89). Debtor also stated during previous testimony that the 1988 Toyota was his wife's truck (Transcript p.61) and further stated that he owned no vehicles other than the three which the Court accepted his valuation of (Transcript p.62). The Debtor may wish that the evidence in July 1994 was different, but the fact is that the evidence, as presented, sustains this Court's holding that the 1988 vehicle was his wife's and any effort by the Debtor to impeach his own testimony will not be allowed at this

time. In any event, it does not constitute newly discovered evidence.<sup>1</sup>

- 6) The contention that the fencing equipment should have been valued greater than \$46,500.00.

This contention was made by Debtor's counsel during the trial and was rejected. The transcript clearly reveals a meticulous analysis of the total amount which Debtor actually received when this fencing equipment was sold and the Court subsequently adopted this value (Transcript pp.64-67). While there was evidence that Debtor may have reduced the price which he charged his brother, there was no competent evidence to show how much additional value there might have been in the equipment. Nor did the Court engage in speculation about how much more it might have been worth in light of the fact that \$46,500.00 was the total amount received by the Debtor from the sale of the equipment. See Order of October 4, 1994, Ch. 7 Case No. 93-40713, Adv.Pro. No. 93-4147, Doc. No. 25, p.10, fn.6. These contentions have been argued previously and do not form a basis for reconsideration of this Court's previous Order.

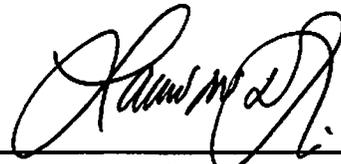
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<sup>1</sup> This contention is similar to the one that Debtor made during the hearing of November 25, 1996, when the Court originally was considering his various motions which are again under consideration now. That contention was that he owned a parcel of real estate valued at approximately \$29,000.00 not located in the State of Georgia which should have been considered as an asset of his in determining whether he was insolvent on February 20, 1990. The problem is quite simply that by his own sworn testimony at the trial on July 20, 1994, Debtor denied owning any real estate other than the farm that has been central to the dispute in this case (Transcript p.88). He cannot be allowed at this time to attempt to impeach his own testimony or to submit evidence which would suggest that he has previously given false testimony, which constitutes a violation of federal criminal law. See 28 U.S.C. §§ 152, 1621, 1623.

7) The contention that George Barnett's claim is false.

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 his Court. This contention is insufficient to form a basis for reconsideration of this Court's Order.

For the foregoing reasons Debtor's Motion filed December 5, 1996, is denied.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 6th day of December, 1996.