

In the United States Bankruptcy Court

for the Northern District of Iowa

LAURENCE ALAN BURCH
dba The Used Car Factory
Debtor(s).

Bankruptcy No. 97-60410-W

Chapter 7

CHARLES SEAMANS
KATHY SEAMANS
Plaintiff(s)

Adversary No. 97-9050-W

vs.

LAURENCE ALAN BURCH
dba The Used Car Factory
Defendant(s)

RULING ON ADJUDICATION OF LAW POINTS AND SUMMARY JUDGMENT

On June 20, 1997, the above-captioned matter came on for hearing by telephone conference call pursuant to assignment. Plaintiffs Charles and Kathy Seamans appeared pro se. Defendant/Debtor appeared by Attorney Larry Anfinson. The parties have submitted uncontested exhibits as well as briefs. Upon completion of oral argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

Debtor Laurence Alan Burch filed his Chapter 7 Petition on February 20, 1997. On March 17, 1997, Creditors Charles and Kathy Seamans filed what was denominated as an appearance and Motion to Determine Dischargeability of Debt. The Court treated this matter as an adversary proceeding and upon payment of the filing fee, this matter was docketed as an adversary proceeding to determine the dischargeability of a debt. The Motion and Amended Complaint assert that an amount owed to Kathy Seamans is the "unpaid" balance of Court ordered criminal restitution awarded to the Seamans by the District Court of Iowa after Debtor was convicted of a felony fraud perpetrated against the Seamans. The Amended Complaint provides additional facts and asserts that Mr. Burch plead guilty by reason of an Alford plea to the Class C felony of theft in the first degree in violation of the Iowa Criminal Code. It is asserted that the amount due by way of restitution is \$29,835.75.

A scheduling conference was held on April 25, 1997. The Court expressed interest in the extent to which the Alford plea may have an impact in the ultimate resolution of these adversary proceedings. The parties were allowed a period of time within which to submit briefs with a hearing date scheduled for June 20, 1997. On June 11, 1997, Plaintiffs filed a Motion for Summary Judgment. This Motion for Summary Judgment asserts that no genuine issues of material fact exists and that the Alford plea has no impact on these proceedings. Plaintiffs rely on the victim restitution order entered by the State

District Court at the time of sentencing and assert that victim restitution is nondischargeable under § 523(a)(7) of the Bankruptcy Code.

The uncontested record establishes that Laurence Alan Burch was charged by trial information in Black Hawk County District Court with theft in the first degree in violation of 714.2(1) and 714.1(2) of the Iowa Code. The trial information was filed in June of 1990 and asserts that:

Laurence Alan Burch did misappropriate property of Kathy Seamans which Defendant held in Trust and used this property or disposed of the property in a manner inconsistent with or a denial of the Trust or of the owner's rights in this property, or appropriated such property to Defendant's own use, said property having a value in excess of \$5,000.

A written plea agreement was entered into between Defendant Laurence Burch and the State of Iowa in July of 1990 in which Mr. Burch agreed to enter a plea of guilty to the charge of theft in the first degree pursuant to an Alford plea. The plea agreement establishes that Defendant agreed to make restitution to Kathy Seamans in the amount of \$31,935.75 deducting therefrom any inventory claimed by the Seamans.

On October 15, 1990, Defendant appeared before State District Court Judge Joseph Keefe for sentencing. Judge Keefe imposed a sentence largely in conformance with the original plea bargain. Judge Keefe did not grant a deferred judgment but entered a conviction for theft in the first degree. Defendant was sentenced to a term of imprisonment not to exceed ten years. This sentence was suspended for a period of two to five years during which time Defendant was placed on probation to the Department of Correctional Services. Judge Keefe specifically ordered that, as a term of probation, Defendant make victim restitution in the amount set out in the plea agreement filed July 23, 1990.

Orders were entered after sentencing to implement the sentence and plea bargain. In an order entered May 9, 1991, State District Court Judge George Stigler ordered that Defendant pay the total sum of \$31,990.75 at a rate of \$100 per month. It appears that only a portion of the Defendant's restitution was paid during the course of the probationary period. On August 8, 1992, Defendant executed a confession of judgment in the amount of \$31,335.75 as victim restitution to the Seamans. It is this amount which Mr. Burch seeks to discharge in his Chapter 7 bankruptcy petition.

The Court asked the respective parties to brief and argue the impact of an Alford plea on the present dischargeability complaint. The Eighth Circuit defines an Alford plea as "a qualified guilty plea in which the defendant is unwilling or unable to admit his participation in the criminal activity, but concludes his or her interests require the entry of a guilty plea because of the strength of the prosecution's case." U.S. v. Baker, 961 F.2d 1390, 1391 (8th Cir. 1992). The doctrine arises from the case of North Carolina v. Alford, 400 U.S. 25, 37 (1970) in which the Supreme Court recognized the validity of such a plea of guilty. In recognizing the validity of such a plea, the Supreme Court also recognized that collateral consequences obviously flow from such a plea of guilty and that all sentencing consequences are available even though the defendant has not necessarily admitted all of the requisite elements of the criminal offense. Id. Restitution is a mandatory consequence of the entry of a guilty plea and the subsequent sentencing. Iowa Code sec. 910.2.

Plaintiffs concede that if they were seeking nondischargeability of conduct by Mr. Burch arising out of a civil proceeding, the same would not have res judicata or collateral estoppel effect. This issue has not been litigated in the Northern District of Iowa and based upon the posture of this case, the Court need not ultimately resolve this issue. However, the Court does not conclude that res judicata or

collateral estoppel have no impact under all circumstances involving an Alford plea. There is authority that an Alford plea can have collateral estoppel consequences under appropriate circumstances. Valcour Printing, Inc. v. Poole, 148 B.R. 49 (Bankr. E.D. Mo. 1992). The extent of the record made in the criminal proceedings is often determinative of whether collateral estoppel may be given preclusive effect in civil litigation including bankruptcy proceedings. In re Miera, 926 F.2d 741 (8th Cir. 1991); In re Olsen, 170 B.R. 161 (Bankr. N.D. 1994); and In re Loevner, 163 B.R. 764 (Bankr. E.D. Va. 1994). However, as the present case involves restitution ordered in a criminal sentencing, the Court need not address and specifically does not resolve any collateral estoppel issues which may arise in the context of an Alford plea.

The present complaint arises out of a criminal restitution order. The law is well settled that restitution ordered by a State court as part of a criminal sentence is within the exception from discharge provided by § 523(a)(7) of the Bankruptcy Code. Kelly v. Robinson, 107 S.Ct. 353 (1986). This result has been recognized by the Eighth Circuit. U.S. v. Vetter, 895 F.2d 456, 459 (8th Cir. 1990). The Iowa Appellate Courts have also acknowledged such a conclusion. State v. Wagner, 484 N.W.2d 212, 216 (Iowa App. 1992); State v. Mayberry, 415 N.W.2d 644, 646 (Iowa 1987).

In summary, the Supreme Court in Kelly v. Robinson held that the fact that State officials did not file a proof of claim or objection to discharge does not render as discharged a Chapter 7 debtor's restitution obligation imposed as a condition of probation in a State criminal court proceeding. The Supreme Court further held that any conditions which are imposed by the State court as a part of the criminal sentencing, are preserved from discharge in bankruptcy pursuant to 11 U.S.C. § 523(a)(7). As restitution obligations are a part of the Iowa criminal sentencing process, restitution obligations imposed upon a criminal defendant as a part of the sentencing and as a condition of probation are not subject to discharge in Chapter 7 proceedings.

The Court does not feel that any further analysis is warranted since this matter has been completely addressed by the United States Supreme Court. The result is clear that criminal restitution is not dischargeable pursuant to 11 U.S.C. § 523(a)(7). Additionally, while the impact of an Alford plea may have significance and relevance in another context, under the present record, whether a plea of guilty was entered pursuant to a regular plea of guilty or under the alternative method of an Alford plea is irrelevant to a determination of this issue. As such, the only result available here is that the criminal restitution ordered in the State sentencing proceeding is nondischargeable under 11 U.S.C. § 523(a)(7).

WHEREFORE, the Court concludes that any issues raised relative to the Alford plea are unnecessary to a determination of the underlying issues in the present case. The Court specifically makes no determination as to the impact of an Alford plea in civil litigation.

FURTHER, this Court concludes that the criminal restitution ordered in this case in State criminal sentencing proceedings is nondischargeable pursuant to § 523(a)(7) of the Bankruptcy Code.

FURTHER, as this obligation is nondischargeable as a matter of law, Plaintiffs' Motion for Summary Judgment is GRANTED.

FURTHER, restitution was ordered in the amount of \$28,835.75 plus any interest provided under State law and the same is therefore determined to be nondischargeable.

FURTHER, judgment shall enter accordingly and all costs of this adversary proceeding are assessed to Defendant Laurence Burch.

SO ORDERED this 9th day of July, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge