

[Cite as *Laurich-Trost v. Wabnitz*, 2003-Ohio-6335.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA

NO. 82639

ARLENE LAURICH-TROST, ETC. :
ET AL. :

Plaintiffs-Appellees :

vs. :

DIETER WABNITZ, ET AL. :

Defendant-Appellant :

JOURNAL ENTRY

and

OPINION

DATE OF ANNOUNCEMENT
OF DECISION:

November 26, 2003

CHARACTER OF PROCEEDING:

Civil appeal from
Court of Common Pleas
Case No. CV-347205

JUDGMENT:

REVERSED

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiffs-Appellees:

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COLLEEN CONWAY COONEY, P.J.:

{¶1} Defendant-appellant Dieter Wabnitz ("Wabnitz") appeals the trial court's order granting plaintiff-appellee Victor Laurich-Trost's motion for set-off and to enter judgment for the net amount. We find merit to the appeal and reverse.

{¶2} Victor Laurich-Trost and Arlene Laurich-Trost, administratrix of the estate of Alice Huusare, sued Wabnitz for breach of contract, fraud, and conversion in January 1998. Wabnitz filed a counterclaim, in which he also asserted a claim for conversion.

{¶3} The case proceeded to trial in November 1998. The jury returned verdicts against Wabnitz and in favor of Arlene Laurich-Trost in the amount of \$18,750 and in favor of Victor Laurich-Trost in the amount of \$81,950. The jury also returned a verdict in favor of Wabnitz and against the Laurich-Trosts in the amount of \$20,000 on Wabnitz's counterclaim.

{¶4} Victor Laurich-Trost subsequently filed a motion to set off and enter judgment for net amount. However, before the court ruled on the motion, Wabnitz filed a Chapter 7 bankruptcy in the Eastern District of Michigan, thereby staying the case and preventing the court from granting a set-off.

{¶5} Wabnitz listed the \$20,000 judgment as an asset in the bankruptcy case and the Laurich-Trosts' judgments against him as

debts. Because the amount the Laurich-Trosts owed him was less than the amount he owed them, the trustee found the judgment was a worthless asset and valued the \$20,000 judgment the Laurich-Trosts owed to Wabnitz at zero.¹ The bankruptcy court ultimately issued a discharge of debtor order, discharging Wabnitz's debts including the Laurich-Trosts' judgments against him as a "no assets" case.²

Thereafter, Wabnitz filed a garnishment in the Cleveland Municipal Court, attempting to collect the \$20,000 judgment he had obtained against the Laurich-Trosts. Victor Laurich-Trost asserts that he returned to the trial court seeking an order setting off the \$20,000 judgment against Victor Laurich-Trost's \$81,950 judgment against Wabnitz in an effort to avoid garnishment. The trial court granted the motion and entered final judgment against Wabnitz for the net amount of \$61,950. Wabnitz appeals.

{¶6} In his sole assignment of error, Wabnitz argues the trial court erred when it granted Victor Laurich-Trost's motion for set-off and entered judgment against Wabnitz for the net amount of \$61,950. We agree.

{¶7} Section 524(a) of the Bankruptcy Code states, in pertinent part:

¹ Victor Laurich-Trost provided a copy of the bankruptcy court's "Individual Estate Property Record and Report." Although it is not a certified copy, these facts are not disputed by the parties.

² Although the record does not contain a certified copy of the order discharging Wabnitz's debts, these facts are also undisputed by the parties.

"A discharge in a case under this title - * * *

"(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged * * * whether or not discharge of such debt is waived;

"(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; * * *" (Emphasis added).

11 U.S.C. §524.

{¶8} In *Thompson v. Mabor, Nugent Co.* (Jan. 30, 1997), Cuyahoga App. No. 69126, this court held, pursuant to 11 U.S.C. §524, that once a debt has been discharged, the creditor is enjoined from maintaining proceedings to either collect on the obligation or offset the debtor's obligation. "All debts of Mabor [the debtor], including any debt to him, were discharged in the federal bankruptcy proceedings." *Id.* (Emphasis added.) Thus, in the instant case, the trial court's order granting the set-off and entering final judgment against Wabnitz for the net amount of \$61,950 violates 11 U.S.C. §524 because Victor Laurich-Trost's judgment against Wabnitz as well as Wabnitz's \$20,000 judgment were discharged in bankruptcy. See, *Laurich-Trost v. Coating Measurement Technologies* (June 6, 2002), Cuyahoga App. No. 80116, at _ 56 (Wabnitz's individual liability for the underlying judgment was discharged in his personal bankruptcy).

{¶9} Accordingly, the sole assignment of error is sustained.

Judgment reversed.

SEAN C. GALLAGHER, J. and

ANTHONY O. CALABRESE, JR., J. CONCUR

PRESIDING JUDGE
COLLEEN CONWAY COONEY

KEYWORDS SUMMARY

Laurich-Trost, etc., et al. v. Dieter Wabnitz, et al., No. 82639

GARNISHMENT; BANKRUPTCY; 11 U.S.C. _524