

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Charles Vereen,

Debtor.

Robert F. Anderson, Trustee,

Plaintiff,

v.

Charles Vereen, Charles Clark Vereen, Sonya  
Ann Vereen Clark, Melanie Renee Vereen,  
Russell Wilson Vereen, Hamilton Julian  
Vereen, Mark Groves, Garrett Sutton, Nancy  
Lake, Vereen Joint Revocable Inter Vivos  
Trust, East Cambridge Limited Partnership  
and Five Star Management,

Defendants.

C/A No. 96-78369-W

Adv. Pro. No. 98-80262-W

**FILED**  
99 MAY -5 PM 2:30  
DIST OF SOUTH CAROLINA  
**ENTERED**

MAY - 6 1999

**S.R.P.**

**JUDGMENT**

Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order  
of the Court, the Motion to Dismiss filed by the Defendant Charles Vereen is denied.

Columbia, South Carolina,

May 5, 1999.

  
UNITED STATES BANKRUPTCY JUDGE

83

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Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
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~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

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IN RE:

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C/A No. 96-78369-W

Adv. Pro. No. 98-80262-W

Robert F. Anderson, Trustee,

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Lake, Vereen Joint Revocable Inter Vivos  
Trust, East Cambridge Limited Partnership  
and Five Star Management,

Defendants.

ORDER

Chapter 7

ENTERED

MAY - 6 1999

S. R. P.

THIS MATTER comes before the Court upon the Motion to Dismiss filed by the Defendant Charles Vereen ("Mr. Vereen"). Based upon a review of the pleadings and the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

In 1995, Mr. Vereen had an interest in a bungee jumping business operated in Myrtle Beach, South Carolina called Beach Bungee, Inc., a South Carolina Corporation owned by the Debtor and others. Michael Nash and Zachary Steinke were killed at Beach Bungee and on October 27, 1995, the Estates of Mr. Nash and Mr. Steinke obtained a Twelve Million Dollar judgment against the Debtor and others.

On November 14, 1996, the Debtor filed a voluntary Chapter 7 bankruptcy petition. On

*JW-1 of 5-*

*[Signature]*

November 4, 1998, the Trustee filed the within adversary proceeding asserting his strong arm powers pursuant to 11 U.S. C. § 544 and seeking, *inter alia*, to avoid certain pre-petition conveyances by Mr. Vereen to, and through, the other Defendants as fraudulent conveyances pursuant to the South Carolina Statute of Elizabeth. The Trustee also alleged a civil conspiracy cause of action.

On March 18, 1999, Mr. Vereen filed the within Motion to Dismiss. Mr. Vereen asserts that the Trustee is precluded from seeking a personal judgment against him because he has received his discharge. The Trustee however asserts that while he is not seeking a personal judgment against Mr. Vereen, Mr. Vereen is in fact an indispensable party to this adversary proceeding as an adjudication that Mr. Vereen made the conveyances without consideration and with the intent to defraud his creditors is necessary for avoidance of the conveyances and to impose liability on the Defendants against whom monetary judgments are sought. An additional objective of the fraudulent transfer cause of action is to void the transfers so that title to the various properties is returned to the Debtor's name and therefore, as property of the Chapter 7 estate, be available for distribution to creditors.

Mr. Vereen also argued at the hearing that the fraudulent conveyance cause of action was not asserted within the applicable statute of limitations and had to be dismissed, however, this argument was withdrawn without prejudice by Mr. Vereen on April 29, 1999.

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## CONCLUSIONS OF LAW

Section 524(a)(2) of the Bankruptcy Code prohibits "an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor ...." (emphasis added). As stated in Johnson v. Home State Bank, 111 S.Ct. 2150, 2153 (1991), "a discharge extinguishes only the personal liability of the debtor." It does not extinguish claims against the debtor for which personal liability is not sought. 111 S.Ct. at 2154. Additionally, as stated by the Tenth Circuit Court of Appeals, the Bankruptcy Code permits a creditor to bring an action directly against a discharged debtor for the purpose of establishing the debtor's liability when establishment of that liability is a prerequisite to recovery from another entity.

It is well established that [11 U.S.C. § 524] permits a creditor to bring or continue an action directly against the debtor for the purpose of establishing the debtor's liability when, as here, establishment of that liability is a prerequisite to recovery from another entity. In re Western Real Estate Recovery Fund, 922 F.2d 592, 601 n. 7 ("the fact that the debtor may be involved in the ensuing litigation, even named as a defendant where necessary to enable recovery against a codefendant (such as a liability insurer), does not permit invocation of section 524(a) to preclude a creditor's post-bankruptcy pursuit of a discharged claim against a third party"); In re Jet Florida Sys., 883 F.2d at 976 (suit against debtor permitted to establish right to recover from debtor's insurer); Shade v. Fasse (In re Fasse), 40 B.R. 198, 200 (Bankr.D.Colo.1984) (suit against debtor permitted to establish right to recovery from Colorado Real Estate Recovery Fund); see generally 3 R. Babitt, A. Herzog, H. Novikoff & M. Sheinfeld, Collier on Bankruptcy ¶ 524.01 at 524- 16 (15th ed. 1990).

In re Walker, 927 F.2d 1138 (10th Cir. 1991). A number of courts have permitted actions against discharged debtors for the purpose of adjudicating the debtor's liability to enable recovery from a third party. See Green v. Welsh, 956 F.2d 30 (2d Cir. 1992); In re Jet

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Florida Sys., Inc., 883 F.2d 970 (11th Cir. 1989); In re Mann, 58 B.R. 953 (Bkrtcy. W.D. Va. 1986) and In re Jason Pharmaceuticals, Inc., 224 B.R. 315 (Bkrtcy. D.Md. 1998).

In Mann, the bankruptcy court permitted continuance of a lawsuit against the debtor arising from an automobile accident. The lawsuit was necessary in order that the plaintiff could recover under the uninsured coverage provision of her insurance policy. The Mann court held that when it is necessary to commence or continue a suit against the debtor in order to establish liability of another, the suit will not be barred by the discharge injunction and that the "injunction is required only when continuance of a civil suit will result in efforts to collect a judgment award from the debtor or his property." 58 B.R. at 958. See also 4 Collier on Bankruptcy § 524.05 at 524-39. In this case, as in Mann, an adjudication that the Debtor made the conveyances without consideration and with the intent to defraud his creditors is necessary for avoidance of the conveyances and to impose liability on the Defendants against whom monetary judgments are sought. Therefore, the bankruptcy discharge does not bar this action.

On a motion to dismiss, all facts must be construed in the light most favorable to the non-moving party and the allegations of the Complaint are taken as true. Mylan Laboratories, Inc. v. Matkari, 7 F.3d 1130 (4th Cir. 1993); Martin Marietta Corp. v. International Telecommunications Satellite Org., 991 F.2d 94 (4th Cir. 1992). A motion to dismiss for failure to state a claim for relief should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim. Rogers at 325 (citing Johnson v. Mueller, 415 F.2d 354, 355 (4th Cir.

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1969)). Based upon the reasons stated within, the Court must deny Mr. Vereen's motion to dismiss.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
May 5, 1999.

  
UNITED STATES BANKRUPTCY JUDGE



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