

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re

TODD W. HANSEN,

Debtor.

Case No. 97-25273-MDM

Chapter 7

ALAN SCHROEDER and BARBARA
SCHROEDER, individually and on behalf
of Brookfield Storage, Inc., a Wisconsin
Corporation, and Supermound Investors, a
Wisconsin general partnership,

Plaintiffs,

v.

Adversary No. 97-2459

TODD W. HANSEN,

Defendant.

MEMORANDUM DECISION ON POST-TRIAL
REQUESTS FOR RECONSIDERATION

On May 29, 1997, the debtor, Todd Hansen, filed for bankruptcy protection under chapter 7. The plaintiffs, Alan and Barbara Schroeder, brought this adversary proceeding against the debtor alleging that various debts owed to them were nondischargeable under 11 U.S.C. § 523(a)(2), (4), and (6). A trial was held over the course of three days in June and this court found that some of the alleged damages were nondischargeable under § 523(a)(2)(A). *See* 6/3, 4, 24/99 court minutes. The order for judgment has not yet been entered.

The Parties' Positions

The plaintiffs now request that the court reconsider denying recovery of attorney fees

incurred as a result of the wrongful conduct of the debtor. The plaintiffs point out that Wisconsin courts recognize that attorney fees may be awarded as damages to parties who, because of the fraudulent or deceitful conduct of another, have had to protect or defend their interests in litigation with one or more third parties. *See Baker v. Northwestern Nat'l Casualty Co.*, 26 Wis. 2d 306, 318-20, 132 N.W.2d 493 (1965).

The debtor opposes the request and contends that the legal fees were incurred on behalf of Supermound Investors and Brookfield Storage, Inc. Because this court previously barred derivative claims pursuant to the statute of repose, *see* 4/13/99 court minutes, the debtor argues that those fees cannot be awarded. The debtor also requests that the court amend and deny its previous awards of \$15,000 for the amount the plaintiffs paid on the Brookfield Storage, Inc., personal loan guarantee, and \$30,500 for their lost investment in Mobile Storage, Inc., a separate corporation owned by Supermound Investors. The debtor claims that those amounts were not a part of the plaintiffs' initial investments.

Discussion

The plaintiffs incurred legal fees and costs of \$31,000 in relation to the Supermound Investors litigation and \$61,000 in relation to the Brookfield Storage, Inc., litigation. The Schroeders were billed for legal services rendered by Cook and Franke, S.C., from the early part of 1991 through mid 1993. The firm's services pertained to the real estate sales and foreclosure, as well as state court litigation against the title company that disbursed the construction funds, the bank that permitted deposit of converted funds to the debtor's account, and the debtor. *See* Trial Exhibits 33A & 33B.

Case law does support an award of legal fees incurred in litigation with third parties

because of fraud. *Baker v. Northwestern Nat'l Casualty Co.*, 26 Wis. 2d 306, 132 N.W.2d 493 (1965), *overruled on other grounds*, *DeChant v. Monarch Life Ins. Co.*, 200 Wis. 2d 559, 547 N.W.2d 592 (1996). The plaintiffs were embroiled in extensive litigation and legal matters which probably would never have occurred but for the fraudulent conduct of the debtor. However, the United States District Court in the title company litigation, and the Wisconsin Court of Appeals in the bank litigation, held that the conversion of funds by the debtor injured the corporation and partnership, not the Schroeders individually. The debtor's conduct in causing the Schroeders to part with their initial investments in Supermound Investors, Brookfield Storage, Inc., and Mobile Storage, Inc., was not addressed by these previous proceedings. Thus, the legal fees requested were not incurred by the Schroeders in protecting their own interests, as was the case in *Baker*, and they are not recoverable as part of their damages.

This court previously awarded the plaintiffs their initial investments, including \$15,000 for the amount the plaintiffs paid on the Brookfield Storage, Inc., personal loan guarantee, and \$30,500 for their lost investment in Mobile Storage, Inc., which the debtor now asks be deducted from the judgment. The award was based on this court's finding at the close of trial that the debtor intentionally defrauded the plaintiffs at the time of their initial investments in Supermound Investors and Brookfield Storage, Inc. This deceit continued throughout the working relationship between the parties and caused the Schroeders to make an additional investment of their money, namely the investment in Mobile Storage, Inc. The state court of appeals had already established that the plaintiffs were barred from bringing derivative claims against the debtor. *Schroeder, et al. v. Equitable Bank, SSB, et al.*, No. 97-2960, 1998 WL 538499 (Wis. Ct. App. Aug. 26, 1998). Consequently, this court ruled that any derivative claims, such as lost profits, would be

denied.

This court is satisfied that the investment in Mobile Storage, Inc., was a personal loss of the Schroeders and was not derivative in nature. That portion of the judgment was properly awarded. However, the court of appeals held that the \$15,000 payment on the guarantee was derivative of the debtor's acts against the corporation and could not be awarded to them personally. *Schroeder*, 1998 WL 538499, at *3. This court is bound by that holding. As a result, the judgment will be reduced by \$15,000.

Conclusion

The plaintiff's motion to change the judgment amount to include attorneys' fees is denied. The defendant's motion to reduce the judgment by \$15,000 is granted, and his motion to reduce the judgment by \$30,500 is denied. The order for judgment and judgment will be issued accordingly.

Dated at Milwaukee, Wisconsin, August ²⁵~~2~~, 1999.

BY THE COURT



Honorable Margaret Dee McGarity
United States Bankruptcy Judge