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Yadkin Valley Bank & Trust Co. v. McGee: BANKRUPTCY TRUSTEE ABSOLVED OF PERSONAL LIABILITY ABSENT WILLFUL MISCONDUCT

It was recently held by the United States Court of Appeals, in *Yadkin Valley Bank & Trust Co. v. McGee* — F.2d — (4th Cir. 1987), that a bankruptcy trustee, although appointed by a federal court, does not have absolute immunity while administering a bankrupt estate. The court of appeals reversed the district court's affirmance of the Bankruptcy Court ruling and has remanded the case for further factual findings.

On July 15, 1981 John and Ruth Hutchinson filed a voluntary Chapter 7 petition in the United States Bankruptcy Court for the Middle District of North Carolina. The debtors owned a dairy farm and the equipment which was used to operate the farm. The property had two mortgages, the first was owned by R.A. Newman for \$62,000.00 and the second was granted to the plaintiff-appellant, Yadkin Valley Bank & Trust Co. for \$34,429.08. In addition, the dairy equipment was subject to liens by various secured creditors totalling \$18,000.00.

In September, 1981, two months after the petition was filed, Bert Holbrook offered to purchase the property and the equipment for \$135,000.00. This offer was accepted by the trustee on December 14, 1981 upon the condition that the two mortgagees accept the offer as well. In the meantime, lienholders of the dairy equipment began repossession proceedings. After realizing that some of the equipment had been taken from the property, Holbrook reduced his offer to \$122,000.00. As time passed and before the sale was consummated, Holbrook's offer had fallen to \$80,000.00. Because value of the land had fallen below that which would sufficiently cover the two mortgages, Trustee McGee abandoned the property pursuant to a court order. The land was then foreclosed at which time it was purchased by the second mortgage holder, Yadkin Valley, for \$78,000.00.

The plaintiff-appellant sued McGee for violating the duties of a trustee. As provided in the United States Code Annotated, the duties of a trustee include to, "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C.A. §704(1) (Supp. 1987). Yadkin alleged that McGee's conduct in administering the bankrupt estate was negligent and that the sale of the farm

was not administered expeditiously, nor was the administration in the best interest of the parties. The bankruptcy court granted the defendant's motion for summary judgment, holding that a trustee had absolute immunity from suit in this case. The United States District Court affirmed the lower court decision.

On appeal the United States Court of Appeals, sought to define the specific immunity that a trustee has in bankruptcy. The issue is clearly reviewable by the court which held that trustees in bankruptcy do not hold an absolute immunity to suit. The court relied on a case previously decided by it which held that,

[w]hen acting within the discretionary bounds of his authority, it is settled that the trustee may not be held liable for any mistake of judgment; that his liability personally is "only for acts determined to be willful and deliberate in violation of his duties" and specifically that he is liable solely "in his official capacity, for acts of negligence." *Sherr v. Winkler*, 522 F.2d 1367, 1375 (10th Cir. 1977), relying on *Mosser v. Darrow*, 341 U.S. 267 (1951). (Emphasis added).

McGee, — F.2d — (4th Cir. 1987), (quoting *United States v. Sapp*, 641 F.2d 182, 184-185 (4th Cir. 1981).

The facts in *Sapp* consist of the trustee giving a post-dated \$3,100.00 check from the bankrupt estate to the plaintiff as restitution for prior months of unpaid lease payments. Both the trustee and lessor believed the debtor would be successful in the future in lieu of the reorganization. However, the check was returned twice for insufficient funding and the plaintiff sued. The court held that the trustee was not negligent in his conduct, and that at most he was guilty of a "mere mistake of judgment." *United States v. Sapp*, 641 F.2d at 184.

In summary, *Sapp* illustrated that when a trustee is acting within his authority or under direct order of the court in continuing a business in bankruptcy, he can not be held liable as a trustee. By being appointed, he is provided with certain authority and vested with a great deal of discretion. Therefore a mere mistake in judgment will not result in personal liability against him. As stated in *Sapp*, for a trustee to be held personally liable he must be acting outside of his authority.

In the case at bar the question was whether McGee's failure to expedite the sale of the farm constituted negligence or a mere mistake of judgment. If it was one of mistaken judgment, then regardless of

the damages, the trustee would be immune. To the contrary, if the trustee's acts were deemed negligent, willful and deliberate, then immunity would not be applicable. Thus, because the controversy centered on questions of fact the United States Court of Appeals remanded for further findings.

Generally, the bankruptcy laws were designed to help the debtor or the debtor's business survive financial crisis. The trustee is appointed to aid in this procedure and his duties are statutorily defined in the United States Code Annotated. However, trustees should be aware that although appointed by the court, their actions are not absolutely immune. Although it appears that a trustee's immunity does blanket his conduct to a large degree, a deliberate act outside of a trustee's discretion is not protected.

— Lynn R. Meagher

For Halifax Packing Co. v. Coyne: SEVERANCE PAY BENEFITS DO NOT FLOW FROM ERISA IN INSTANCES OF PLANT CLOSINGS

In *Fort Halifax Packing Co. v. Coyne*, 107 S.Ct. 2211 (1987), the United States Supreme Court held that a Maine statute requiring employers to pay employees severance pay in the event of plant closings did not "relate to any benefit plan" within the meaning of the Employee Retirement Income Security Act (ERISA) preemption provision.

Fort Halifax Packing Company (Fort Halifax) purchased an existing poultry packaging and processing plant in 1972 and operated it for approximately nine years until its closing in May of 1981 for unspecified business reasons. The plant had been operating continuously for nearly thirty years and its closing left over one hundred employees out of work. Eleven employees brought suit in Maine Superior Court seeking enforcement of Me. Rev. Stat. Ann. tit. 26, §625-B (Supp. 1986-1987). Essentially, the statute provides that any employer who closes a plant with one hundred or more employees, or relocates a plant more than one hundred miles away, must provide one week's severance pay for each year of employment to all employees who had worked in the plant at least three years. The employer is excused from this provision if the employee accepts employment at the new location or is covered by a labor contract which deals with the issue of severance pay.

The Maine Director of the Bureau of Labor Standards also brought an action to enforce the statute and, under the terms of

the statute, his action took precedence over that of the eleven employees. *Id.*, 107 S.Ct. at 2212. The court rejected Fort Halifax's argument that the Maine statute was preempted by ERISA, holding that ERISA preempted only benefit plans created by employers or employee organizations. Since this case involved a benefit plan which arose by operation of state law, ERISA did not apply and there was no preemption problem.

The Supreme Court, while affirming the judgment of the Maine Supreme Judicial Court, rejected their rationale. Under the Maine court's analysis, states could set up benefit plans because only employers and employee organizations were barred by ERISA from doing so. What the Maine court failed to recognize, however, was that such an analysis was in direct conflict with the Congressional purpose for enacting ERISA. Congress wanted to establish a uniform set of administrative practices in dealing with employee benefits, thereby eliminating conflicting regulatory requirements. By allowing states to set up benefit plans *sua sponte* there could still be serious conflicts between state benefit plans and benefit plans provided for by ERISA.

Recognizing the fallacy of the lower court's reasoning, the Supreme Court took a different approach. The Court held that the Maine statute was valid because it neither established, nor required, employers to maintain an "employee benefit plan" as that phrase was interpreted by Congress. In so holding, the Court rejected Fort Halifax's principle argument that any state law which deals with an employee benefit listed in ERISA automatically regulates an employee benefit plan and is therefore preempted.

The Court stated three reasons for its ruling. First, the Court decided that the plain language of ERISA is contrary to Fort Halifax's interpretation. The preemption provision of ERISA applies only to employee benefit plans, not employee benefits. The Maine statute providing for severance pay gave employees a benefit but did not establish a benefit plan. The Maine statute requires no regulatory scheme or administrative programs that could be construed as a "plan." It merely establishes a one-time payment conditioned upon the happening of a specific event. *Id.* at 2213.

Second, the Court analyzed the legislative history and determined that Congress' principle purpose in enacting ERISA was to eliminate conflicting state and local regulations. *Id.* at 2216. Companies frequently conduct business in many different cities and states, thus making compliance with state and local regulations both burdensome and inefficient. By estab-

lishing a system of federal regulations to control benefit plans, Congress hoped to make it easier for employers to do business while at the same time protecting the pension and benefit rights of employees. Examining the Maine statute in light of ERISA's purposes, it was clear to the Court that none of the Congressional concerns were present in this case. *Id.* at 2213.

Finally, the Court noted that another purpose of ERISA was to mandate disclosure requirements, thus providing safeguards "with respect to the establishment, operation, and administration of (employee benefit) plans." 29 U.S.C. §1001(a) (1982). Since there were no administrative regulations or continuous activities involving a "plan" under the Maine statute, disclosure would be meaningless and safeguards unnecessary.

The Court's decision in *Fort Halifax* allows states to provide statutory benefits to employees as long as they require no continuous administration constituting a benefit plan.

— Steven E. Sunday

***Emmert v. Hearn*: "ALL MY PERSONAL PROPERTY" CLAUSE CONSTRUED TO ENCOMPASS TESTATOR'S TANGIBLE AND INTANGIBLE PERSONAL PROPERTY**

The Court of Appeals of Maryland in *Emmert v. Hearn*, 309 Md. 19, 522 A.2d 377 (1987), held that a testator's intangible, as well as tangible, personal property passed to his surviving children under a paragraph in a will that read: "I bequeath all my personal property to my surviving children." In so holding, the court of appeals affirmed the court of special appeals' reversal of the circuit court ruling.

George Roberts, the testator, died in 1981. He was survived by seven children. His wife had predeceased him eleven years prior, and a son had died in 1971, leaving one child. Roberts left a will (executed in 1977) in which he bequeathed all of his personal property to his surviving children to be divided equally.

The estate of George Roberts, at the

**"Maybe
it will
go away."**

The five most dangerous words
in the English language.

American Cancer Society

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