

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

In Re:)	Dist. Ct. Case No.:
)	2:10-CV-1205 JAM
RODNEY ANDREWS and VALERIE ANDREWS,)	
)	Bk. Ct. Case No.: 08-28963
)	Adv. Proc. Case No.:
Debtors.)	09-21543-C
)	Bk. App. Panel Case No.:
)	EC-10-1133
RODNEY ANDREWS and VALERIE ANDREWS,)	
)	
Appellants,)	<u>ORDER AFFIRMING THE</u>
)	<u>BANKRUPTCY COURT'S ORDER</u>
v.)	
AUGUST B. LANDIS, Acting United States Trustee,)	
)	
Appellee.)	

This matter is before the Court on Debtors/Appellants Rodney and Valerie Andrews' ("Appellants") Appeal (Doc. #7) from the Bankruptcy Court's Order denying Appellants' discharge under 11 U.S.C. § 727(a)(4)(A). Appellee/Trustee August Landis ("Appellee") asks the Court to affirm the Bankruptcy Court's order (Doc. #8). This matter was set for a hearing on January 12, 2011, and ordered submitted on the papers.¹ For the reasons set forth below, the

¹ This matter was determined to be suitable for decision without oral argument. E. D. Cal. L. R. 230(g).

1 Bankruptcy Court's order is AFFIRMED.

2
3 I. FACTUAL AND PROCEDURAL BACKGROUND

4 On July 2, 2008, Appellants filed for bankruptcy protection
5 under Chapter 7, in the Bankruptcy Court for the Eastern District
6 of California. In the course of the bankruptcy case, in
7 Appellants' written filings and in the meeting of the creditors,
8 under oath, numerous inconsistencies and omissions were discovered.
9 Appellants did not report one of their businesses, omitted the
10 income, accounts and debts related to that business, did not report
11 one bank account, did not disclose their previous Chapter 13
12 bankruptcy, and gave inconsistent answers regarding whether they
13 had reviewed the bankruptcy filings prior to signing them.

14 On March 4, 2009, the United States Trustee filed a complaint
15 to deny Appellants discharge under Section 727(a)(4)(A) of the
16 Bankruptcy Code, for false statements under oath. Trial was
17 conducted on March, 9, 2010, and concluded with Bankruptcy Judge
18 David Russell ruling in favor of the United States Trustee.
19 Judgment was entered denying the Appellants discharge pursuant to
20 11 U.S.C. § 727(a)(4)(A).

21 The issue raised by Appellants on appeal is whether the
22 Bankruptcy Court committed a reversible error in dismissing the
23 Chapter 7 petition under 11 U.S.C. § 727(a)(4)(A), despite

24 "the Court's anguish in doing so and clear, accusatory and
25 candid acknowledgement on the transcript of the record of the
26 adversarial trial proceedings and before counsel and
27 Appellants in those proceedings that Appellants' bankruptcy
28 counsel (Steele Lamphier, Esquire,) who represented them
through and, not including, the adversarial trial proceedings,
had committed acts of gross negligence in their
'representation,' that they 'had recourse' against that
attorney, where such gross negligence directly resulted in
injury to them (i.e. the dismissal) which gross negligence

1 they had no reason to know about or protect themselves against
2 contrary to equity and the remedial principles of FRCP Rule
60(b)(6).” (Appellants’ Brief, p. 2-3.)

3 Appellants assert that the Bankruptcy Court did not make any
4 errors in its factual findings, but made an error of law by “not
5 applying the equitable remedial principles of Federal Rule of Civil
6 Procedure 60(b)(6).” Appellee argues that no Rule 60 motion was
7 brought before the Bankruptcy Court, that the Bankruptcy Court did
8 not make the purported findings of gross negligence, and that the
9 Bankruptcy Court properly denied Appellants’ bankruptcy claim under
10 11 U.S.C. § 727(a)(4)(A).

11 12 II. OPINION

13 A. Legal Standard

14 The Bankruptcy Court’s interpretations of the Bankruptcy Code
15 and conclusions of law are reviewed de novo by this Court. Blausey
16 v. United States Trustee, 552 F.3d 1124, 1132 (9th Cir. 2009)
17 (internal citations omitted). This Court reviews the Bankruptcy
18 Court’s factual findings for clear error. Id. Factual review
19 under this standard requires deference to the Bankruptcy Court.
20 McClure v. Thompson, 323 F.3d 1233, 1240 (9th Cir. 2003). Review
21 under the clearly erroneous standard requires significant deference
22 to the trial court. Ambassador Hotel Co., Ltd. v. Wei-Chuan Inv.,
23 189 F.3d 1017, 1024 (9th Cir. 1999) (internal citations omitted).
24 The factual findings will only be clearly erroneous if the
25 reviewing court has the “definite and firm conviction that a
26 mistake has been committed.” Id. (quoting Concrete Pipe & Prods.
27 of Cal., Inc. v. Construction Laborers Pension Trust, 508 U.S. 602,
28 623 (1993)); see also Latman v. Burdette, 366 F.3d 774, 776 (9th

1 Cir. 2004). "Clear error is not demonstrated by pointing to
2 conflicting evidence in the record." Nat'l Wildlife Fed'n v. Nat'l
3 Marine Fisheries Serv., 422 F.3d 782, 795 (9th Cir. 2005) (quoting
4 United States v. Frank, 956 F.2d 872, 875 (9th Cir. 1991)).

5 Instead, if the trial court's account of the evidence is plausible
6 in light of the record viewed in its entirety, the reviewing court
7 may not reverse it even though convinced that, had it been sitting
8 as the trier of fact, it would have weighed the evidence
9 differently. Id. (citations omitted).

10 B. Rule 60(b)(6)

11 Federal Rule of Civil Procedure 60(b)(6) provides that on
12 motion and just terms, the court may relieve a party or its legal
13 representative from a final judgment, order or proceeding for "any
14 other reason that justifies relief." Fed. R. Civ. Proc. 60(b)(6).
15 However, Rule 60 motions must be directed in the first instance to
16 the trial court. See First Beverages, Inc. of Las Vegas v. Royal
17 Crown Cola Co., 612 F.2d 1164, 1172 (9th Cir. 1980). This Court's
18 role as to a Rule 60 motion is limited to reviewing the propriety
19 of the trial court's decision on the motion, if one is filed in the
20 trial court. Id.

21 Appellants did not avail themselves of their right to present
22 a Rule 60 motion to the Bankruptcy Court following the entry of the
23 adverse judgment, but nonetheless argue that the Bankruptcy Judge
24 should have given them Rule 60(b)(6) relief from judgment.
25 Appellants argue that the Bankruptcy Judge should have given them
26 relief because he found them guilty of no wrongdoing, and only
27 denied the discharge under Section 727(a)(4)(A) because he felt
28 compelled to impute their attorney's negligence to them.

1 Appellants do not offer citations to the record of where such
2 statements were allegedly made by the Bankruptcy Judge.

3 Appellants' only challenge to the Bankruptcy Court's
4 conclusions of law is to question, "was he [the Bankruptcy Judge]
5 'handcuffed' as it were and forced to visit the gross negligence of
6 the attorney on the hapless client?" (Appellants' Brief, p. 11.)
7 Appellants assert that the Bankruptcy Judge was not "handcuffed"
8 because he could have utilized Rule 60(b)(6) to set aside or
9 overturn the judgement. Not only does Rule 60(b) relief require
10 Appellants to have brought a formal motion before the Bankruptcy
11 Court, which was not done, but a review of the record reveals that
12 Appellants' assertions of what was said by the Bankruptcy Judge are
13 not supported by the transcript of the hearing. There was not a
14 finding of gross negligence on the part of their attorney, nor were
15 Appellants cleared of all wrongdoing. Moreover, a Rule 60(b)(6)
16 motion was not made before the Bankruptcy Court, nor could the
17 Bankruptcy Court could grant Rule 60(b)(6) relief *sua sponte*.
18 Accordingly, Appellants' arguments are without merit.

19 Appellee also argues that Appellants cannot seek Rule 60(b)(6)
20 relief directly from this Court, noting that the cases relied upon
21 by Appellants were cases in which the Rule 60(b) motion was brought
22 in the first instance in the trial court. To the extent
23 Appellants' brief was intended as a Rule 60(b) motion before this
24 Court, such relief is unavailable. See First Beverages, supra.

25 C. Denial of Discharge Under 11 U.S.C. § 727(a)(4)(A)

26 11 U.S.C. § 727(a)(4)(A) provides that the court shall grant
27 the debtor a discharge unless the debtor knowingly and
28 fraudulently, in or in connection with the case, made a false oath

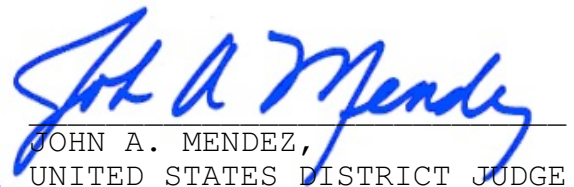
1 or account. Here, the Bankruptcy Court found Appellants to be
2 honest people. (Exhibit 17, p. 126.) However, the Bankruptcy
3 Judge also found that while perhaps not acting with fraudulent
4 intent, Appellants filed documents that were essentially very
5 misleading and full of misstatements and omissions. (Ex. 17, p.
6 129). The Bankruptcy Judge noted that Appellants could have been
7 getting bad advice (Ex. 17, p. 128), and that if so, their current
8 attorney could explain to them that there are other potential
9 rights. (Ex. 17, p. 130). Appellants testified that they had not
10 read the Bankruptcy Schedules prior to signing them, however, the
11 Bankruptcy Judge, citing law from the Eastern District of
12 California, noted that "failure to read the schedules is not a
13 defense in action to Bankruptcy Code Section 727(a)(4)(A)." (Ex.
14 17, p. 128.) Accordingly, the Bankruptcy Court denied Appellants'
15 discharge under section 727(a)(4)(A), for making a false oath or
16 account. Having reviewed the record, this Court affirms the
17 Bankruptcy Court's findings.

18
19 III. ORDER

20 For the reasons set forth above, the Court AFFIRMS the
21 Bankruptcy Court's Order denying Appellants' discharge under 11
22 U.S.C. § 727(a)(4)(A).

23 IT IS SO ORDERED.

24 Dated: March 1, 2011

25 
JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE