

RENDERED: August 28, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

No. 97-CA-0063-MR

CUSTOM TOOL & MANUFACTURING
CO.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
ACTION NO. 96-CI-3099

ATLANTIC AUTOMATION, INC.,
CNC MACHINES, and ANDY BALES,
Individually

APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: ABRAMSON, BUCKINGHAM, and COMBS, Judges.

BUCKINGHAM, JUDGE. Appellant, Custom Tool & Manufacturing Co.

(Custom Tool), appeals from an order of the Fayette Circuit Court dismissing its complaint against Bales-Atlantic Automation Group, Inc. (Bales-Atlantic), Atlantic Automation, Inc. (Atlantic Automation), CNC Machines, Inc. (CNC), and Andy Bales (Bales), individually. For the reasons set forth hereinafter, we affirm.

Bales-Atlantic was a Kentucky corporation engaged in the business of manufacturing specialized machine tables, and Bales was the sole shareholder. In April and May 1996, Bales ordered machine parts from Custom Tool to be used in the manufacturing of the machine tables. The bill, which exceeded \$12,000, was sent to Bales-Atlantic. Custom Tool claims that it was not paid for the machine parts, and it filed its complaint in the Fayette Circuit Court against Bales, individually, and the three corporate entities in September 1996. In response to the complaint, Bales-Atlantic filed a Notice of Abatement Due to Bankruptcy, indicating that it had filed for bankruptcy in August 1996 and that such filing operated as an automatic stay in the case. Atlantic Automation, CNC, and Bales individually filed a joint motion to dismiss on the ground of lack of subject matter jurisdiction due to the exclusive jurisdiction of the bankruptcy court. The circuit court granted the motion to dismiss, finding that it lacked jurisdiction "because the matters set forth in the Complaint are subject to the exclusive jurisdiction of the United States Bankruptcy Court of the Eastern District of Kentucky" Custom Tool's appeal herein followed.

Atlantic Automation and CNC are apparently closely held corporations formed by Bales in 1996. Custom Tool alleges that CNC actually used the same employees, clients, and principal place of business as Bales-Atlantic and that Bales began ordering large quantities of machine parts from Custom Tool in 1996 to be used in tables being manufactured by Atlantic Automation and CNC.

Custom Tool contends that Bales knew he would have Bales-Atlantic file for bankruptcy in the near future and that he wanted to procure large quantities of machine parts for himself and his other two closely held corporations. Custom Tool alleges that Bales perpetrated a fraud on Custom Tool by having it send the bill for the goods to Bales-Atlantic, although the goods were actually used by the other two corporations and by Bales individually.

Although the trial court did not elaborate in its order dismissing Bales and the other two corporations and staying the action against Bales-Atlantic, the trial court apparently reasoned that the automatic stay provided in 11 U.S.C. § 362 (1993) would also extend to the codefendants (Atlantic Automation, CNC, and Bales individually) in this case. 11 U.S.C. § 362 provides in relevant part that:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of-

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

Citing Lynch v. Johns-Manville Sales Corp., 710 F.2d 1194, 1196-97 (6th Cir. 1983), Custom Tool argues that the

automatic stay provisions of 11 U.S.C. § 362 were designed only to protect the bankrupt debtor and not to extend to nonbankrupt third parties or codefendants. While Custom Tool acknowledges that the bankruptcy court may have sole jurisdiction over Bales-Atlantic, it contends that the circuit court had jurisdiction over its fraud action against Bales individually and its action against Atlantic Automation and CNC for unjust enrichment due to Bales's fraud.

On the other hand, the appellees argue that the bankruptcy court has exclusive jurisdiction of this matter and that the bankruptcy trustee may avoid any such fraudulent transfers on behalf of the debtor's estate pursuant to 11 U.S.C. § 548 (1993), which provides in relevant part:

(a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(1) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted

The appellees also argue that Custom Tool's pursuit of its fraudulent conveyance claims in state court could defeat the rights of other creditors in Bales-Atlantic's assets. Citing In re Sunshine Precious Metals, Inc., 157 B.R. 159 (Bkr. D. Idaho 1993), the appellees argue that Custom Tool's claim is a "general" claim which is merely derivative of an injury to the

debtor (i.e., each creditor has suffered injury only because of a decline in the debtor's financial position and thus all creditors are affected by the claim) and is not a claim which is personal to Custom Tool. Id. at 164.

While the automatic stay provided in 11 U.S.C. § 362(a)(1) is generally only available to the debtor and not to codefendants, Lynch, supra, the stay may be applicable to nonbankrupt defendants where there are "unusual circumstances." A.H. Robins Co. v. Piccinin, 788 F.2d 994 (4th Cir. 1986). The court in that case held that "[t]his 'unusual situation,' it would seem, arises when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor." Id. at 999.

We believe that the trial court was correct in determining that the bankruptcy court had exclusive jurisdiction of Custom Tool's claim as a creditor. The sale of the machine parts by Custom Tool resulted in a debt owed by Bales-Atlantic as evidenced by the bill sent to it. If the goods were ultimately transferred to the other two corporations for their use, then a fraudulent conveyance may have occurred. However, the bankruptcy trustee had the power to deal with such a conveyance, and jurisdiction over it was exclusively held by the bankruptcy court. See In re MortgageAmerica Corp., 714 F.2d 1266 (5th Cir. 1983). This provides creditor protection, without which "certain

creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors." Sunshine Precious Metals, supra at 163, citing H.R. Rep. No. 595, 95th Cong., 2nd Sess. 340, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5963, 6297.

The order of the Fayette Circuit Court is affirmed.

All CONCUR.

BRIEFS FOR APPELLANT:

Thomas D. Bullock
Lexington, KY

BRIEF FOR APPELLEE:

Albert F. Grasch, Jr.
Lexington, KY