

Combs v. Cobb's Corner, Inc., et al., No. S0426-06 Cncv (Katz, J., Nov. 14, 2007)

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STATE OF VERMONT
Chittenden County, ss.:

SUPERIOR COURT
Docket No. S0426-06 CnC

ARIN COMBS, et al.

v.

COBB'S CORNER INC., et al

ENTRY ORDER
Motion to Dismiss

Plaintiff Arin Combs sued Cobb's Corner Inc, and its sole shareholders and officers, the Samancis, for sexual harassment. The Samancis were dismissed from the suit because of a bankruptcy discharge and, now non-parties, move for the court to dismiss the corporation as well under that discharge, ending the case. They claim that there is such identity between themselves and the close corporation that they are the real parties in interest, thus exposing them to liability despite their absence from the case. They also assert that they are indispensable parties without whom the suit cannot in good conscience continue.

Although a bankruptcy stay normally applies only to the debtor, it can apply to non-debtors when a claim against the non-debtor will have an immediate adverse economic impact on the debtor's estate. Queenie, Ltd. v. Nygard Int'l, 321 F.3d 282, 287 (2d Cir. 2003). This may be the case where there is such identity between the debtor and a third-party defendant that the debtor may be said to be the real party defendant. Id. at 287-88. On this basis, the Second Circuit in Queenie extended a bankruptcy stay to the debtor's wholly-owned corporation. Id.

It is undisputed that the Samancis are the sole owners and operators of Cobb's Corner, Inc., the remaining defendant. Queenie is therefore on point. The Samancis alone will actually bear the burden of any judgment Plaintiff achieves against the corporation. Even though the corporation is a separate entity, its only two shareholders are the real parties in interest. The discharge should therefore operate to protect the corporation as well. Id.

The distinctions Plaintiff draws between this case and Queenie are not persuasive. The fact that the Samancis are no longer parties to the case does not resolve the issue. Determining whether Cobb's Corner, Inc. should be protected by the Samancis' bankruptcy discharge does not require that they be a party. Plaintiff also notes that the debtor in Queenie had only recently entered bankruptcy, whereas the Samancis' plan was approved nearly year ago. No explanation is given, however, why this means a suit against Cobb's Corner, Inc. will not "have an immediate adverse economic consequence" to the Samancis.

Defendant's motion to dismiss on the basis of the bankruptcy is GRANTED. We do not need to reach the Rule 19 necessary parties issue.

Done at Burlington, Vermont, _____, 20__.

M. I. Katz, Judge