

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

THOMAS E. BRYANT, JR., P.C.

Case No.: 95-12470

Debtor

**ORDER OVERRULING THE TRUSTEE'S OBJECTIONS TO
CLAIM NUMBERS 17 AND 19**

Thomas L. Selden and Brian A. Dodd, Starnes & Atchison LLP, Attorneys for Debtor,
Birmingham, AL
Theodore L. Hall, Attorney for Trustee, Mobile, AL

This matter came before the Court on the trustee's objections to claim numbers 17 and 19. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court has authority to enter a final order. For the reasons indicated below, the Court is overruling the trustee's objections to claim numbers 17 and 19.

FACTS

An involuntary chapter 7 petition was filed against Thomas E. Bryant, Jr., P.C. ("debtor") on September 19, 1995. The debtor employed Thomas E. Bryant Jr. Mr. Bryant also had an involuntary Chapter 7 petition filed against him on September 19, 1995. Mr. Bryant received a Chapter 7 discharge on December 13, 2001.

On June 7, 2002, Old Republic Surety Corporation filed a claim against the debtor for \$1,520,316.51; they had previously filed a claim against Mr. Bryant for \$1,400,000 on January 1, 1996. Employers Mutual Companies filed a claim against the debtor on June 17, 2002, for \$5,321,740.23; it does not appear they filed a claim against Mr. Bryant in his bankruptcy. Both creditors served as sureties of Mr. Bryant, issuing bonds in his favor while he was acting as the

General Guardian and General Conservator of the Probate Court of Mobile County. Mr. Bryant was removed from this position due to his embezzlement of funds from estates, and both creditors' claims arise from payments made as a result of Mr. Bryant's wrongdoings. They filed these claims against the debtor for this very reason. The trustee argues that the claims should be disallowed because Mr. Bryant, not the P.C., was acting as the principal on the bonds issued by the creditors, and therefore, the debtor cannot be held liable. The creditors allege that Mr. Bryant was the agent of the P.C., and the P.C. is therefore liable for his actions. The parties presented no evidence beyond the proofs of claim and the bankruptcy case file. The Court assumes that in serving as General Guardian and Conservator of the Probate Court of Mobile County, Bryant was acting as a shareholder or employee of the P.C.

LAW

The issue presented is whether the P.C. is liable to the sureties of Thomas Bryant. Clearly, Thomas Bryant himself was liable to them for any claims they paid prior to his receiving a discharge. One of the debts discharged by Mr. Bryant was a claim from Old Republic Surety Corporation. Although the Court was unable to verify whether the claim filed by Old Republic against Mr. Bryant is the same debt claimed by it against the P.C., the Court still finds that even assuming it is the same debt, Old Republic is still entitled to have its claim allowed against the P.C. *See* 11 U.S.C. § 524(e)(2) ("Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.").

In *Cooper v. Alabama Farm Bureau Mut. Cas. Ins. Co., Inc.*, the Court recognized that it had previously found a corporation liable for assault and battery, fraud and deceit, trespass, false

imprisonment, malicious prosecution, conspiracy, libel, and conversion. 385 So. 2d 630, 631 (Ala. 1980). In overruling prior cases holding that slander was an individual act for which a corporation may not be held liable, the Court noted that “[w]e see no substantial legal distinction between the ‘individual act’ of slander and the other ‘individual acts’ for which we have already indicated the Court has held that a corporation may be liable.” *Id.* at 632. The Court reached this conclusion by noting that a corporation’s liability for an agent’s actions should be measured by the following test: “whether the alleged tortious conduct was committed by the agent within the line and scope of his employment.” *Id.* at 631. *See Autrey v. Blue Cross & Blue Shield of Alabama*, 481 So. 2d 345, 347-48 (Ala. 1985) *quoting National States Ins. Co. v. Jones*, 393 So. 2d 1361, 1367 (Ala. 1980) (noting that a corporation “‘may be liable in tort for the acts of its servants or agents, done within the scope of employment, real or apparent, even though it did not authorize or ratify such acts or even expressly forbade them’”).

As stated above, the Court assumes Mr. Bryant was an employee or agent of the P.C. and acting within the scope of his employment. If so, the P.C. is liable for Bryant’s acts and, thus, is liable to the sureties.

THEREFORE IT IS ORDERED AND ADJUDGED:

- 1) The trustee’s objections to claim numbers 17 and 19 are OVERRULED.

Dated: October 30, 2006


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE