

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

In re:

No. 02-13534  
Chapter 7

JOHN FORD FARRAR

Debtor

McGLOTHLIN FAMILY CEMETERY  
COMPANY

Plaintiff

v.

Adversary Proceeding  
No. 02-1175

JOHN FORD FARRAR

Defendant

**MEMORANDUM OPINION**

Appearances: K. Stephen Powers and Cynthia D. Hall, Shumacker, Witt, Gaither  
& Whitaker, P.C., Chattanooga, Tennessee, Attorneys for Plaintiff

Thomas E. Ray, Samples, Jennings, Pineda & Ray, Chattanooga,  
Tennessee, Attorney for Debtor/Defendant

R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

McGlothin Family Cemetery Company alleges that the debtor, Mr. Farrar owes it a debt that can not be discharged in his bankruptcy case. Mr. Farrar has filed a motion to dismiss the cemetery company's complaint on the ground that it fails to state a claim upon which relief can be granted. Fed. R. Bankr. P. 7012(b); Fed. R. Civ. P. 12(b)(6). This memorandum deals with that motion.

The cemetery company's complaint is based on its dealings with a masonry company, Architectural Stone, Inc. The complaint alleges that Mr. Farrar was one of the masonry company's two shareholders and represented it in the transactions with the cemetery company.

The cemetery company's complaint against Mr. Farrar can be broken down into two parts. The main part alleges that Mr. Farrar owes the cemetery company a debt that should be excepted from discharge under § 523(a)(2), (4) or (6). The other part alleges that Mr. Farrar made a fraudulent transfer of real property to his wife about thirteen months before his bankruptcy and asks the court to set aside the transfer and recover the property.

The main part of the complaint – the dischargeability part – is identical to the cemetery company's complaint against Michael Strock, the other shareholder in the masonry company. The parties are represented by the same attorneys, and they have made the same arguments regarding dismissal that they made in Mr. Strock's proceeding. As to dismissal of the cemetery company's dischargeability claims against Mr. Farrar, the court adopts the opinion it previously entered in the cemetery company's proceeding against Mr. Strock. The court will enter an order accordingly.

In this proceeding, Mr. Farrar also argues for dismissal of the fraudulent transfer claim. Mr. Farrar asserts that the cemetery company does not have standing to assert the claim. The court agrees. In a Chapter 7 bankruptcy case, the bankruptcy trustee has the authority to recover for the benefit of the bankruptcy estate any pre-bankruptcy fraudulent transfers made by the debtor. Creditors do not have the authority. *Emerson v. Maples (In re Mark Benskin & Co., Inc.)*, 161 B.R. 644 (Bankr. W. D. Tenn. 1993); *NBD Bank v. Fletcher (In re Fletcher)*, 176 B.R. 445 (Bankr. W. D. Mich. 1995). The bankruptcy court may have the power to allow a creditor to pursue a fraudulent transfer suit on behalf of the bankruptcy estate. *Cf. Canadian Pacific Forest Products Limited v. J. D. Irving, Ltd. (In re Gibson Group, Inc.)*, 66 F.3d 1436 (6th Cir. 1995). The cemetery company's complaint does not allege, however, that it has taken any steps to obtain such authority or that the facts justify granting it the authority. The court's order will dismiss the fraudulent transfer count of the complaint but with leave to amend.

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

ENTER:

BY THE COURT

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R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

(Entered 5/9/03)