



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re:

RANDY HALL, aka DURAND D. HALL,

Debtor,

TODD HARDING & AND KIMBERLY
HARDING,

Plaintiffs,

vs.

RANDY HALL, et al.,

Defendants.

Case No. LA 04-19698SB

Adv. No. LA 04-02225SB

CHAPTER 7

**ORDER DENYING
NONDISCHARGEABILITY
OF DEBT**

DATE: September 22, 2005
TIME: 10:00 a.m.
CRTRM.: 1575 (Roybal)

I. Introduction

This case raises the issue of whether the debt owing by debtor Randy Hall¹ (“Hall”) to plaintiffs Todd Harding and Kimberly Harding (“the Hardings”) is dischargeable pursuant

¹This adversary proceeding is also brought against Hall’s spouse Sondra L. Kaufeldt. However, the Hardings presented no evidence against her.

1 to § 523(a)(2).² The court finds that the debt is dischargeable on the ground that the
2 Hardings have proven no damages.

3 4 **II. Relevant Facts**

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6 The joint pretrial order contains a statement of admitted facts requiring no proof,
7 which are incorporated herein by reference, with one exception. Neither of the Hardings
8 is a shareholder in Hy-Tech.

9 Neither of the Hardings paid any money for the work that Hall did on the enclosed
10 patio. All of the payments to Hall came from Winning Performance Products, Inc. and Hy-
11 Tech, each of which is a corporate entity that is not before the court. Neither corporate
12 entity has objected to the discharge of the debt here at issue.

13 The Hardings are shareholders (along with Barbara Rodgers, Kimberly Harding's
14 mother) in Winning Performance, a California corporation. Hy-Tech is a British based
15 corporation with a branch in the United States for which Kimberly Harding works. She had
16 signatory authority with respect to a Hy-Tech checking account.

17 Hy-Tech owed money to Winning Performance. The sum owing was at least as
18 much as the funds paid by Hy-Tech to Hall. Hy-Tech did not owe any money to Hall, and
19 did no business with him. Winning Performance also did no business with Hall, and owed
20 him no money. While the Hardings were among the shareholders of Winning Performance,
21 neither corporation owed them any money at the time that Hall was paid with funds from
22 Winning Performance or from Hy-Tech.

23 24 **III. Analysis**

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27 ²Unless otherwise indicated all section, code and chapter references are to the
28 Bankruptcy Code, 11 U.S.C. §§ 101-1330 (West, 2004), and to the Federal Rules of
Bankruptcy Procedure, Rules 1001-9036.

1 A bankruptcy discharge does not apply to a debt for money, property or services
2 arising from a debtor's false pretenses, false representations, or actual fraud. See §
3 523(a)(2)(A). The Ninth Circuit applies a five-prong test to determine when a debt is non-
4 dischargeable under this provision. The creditor must show: (1) that the debtor made the
5 representations; (2) that the debtor knew they were false; (3) that the debtor made them
6 with the intention and purpose of deceiving the creditor; (4) that the creditor relied on the
7 statements; and (5) that creditor sustained damages as the proximate result of the
8 representations. See, e.g., *Cowan v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1018 n.2
9 (9th Cir. 1997).

10 The Hardings have not satisfied the damages prong of this test. This prong
11 requires the creditor to show that the creditor sustained damages as the result of the
12 debtor's fraudulent representation.

13 In this case, none of the money paid to Hall came from either of the Hardings.
14 It all came from the corporate accounts belonging to Winning Performance and Hy-Tech.
15 These funds did not belong to the Hardings.

16 Plaintiffs explain that, since Hy-Tech owed Winning Performance for its
17 services, they wrote checks directly from Hy-Tech to Hall, instead of writing checks to
18 Winning Performance and then transferring the money to their personal account. This
19 evidence could perhaps support a finding that the funds paid from Hy-Tech were
20 constructive payments from Winning Performance.

21 However, there is no credible evidence that justifies the Hardings' raid on the
22 corporate funds of Winning Performance to pay their personal contract with Hall. Their
23 status as shareholders gives them no such right to the possession or use of corporate
24 funds for this personal purpose.

25 A shareholder's sole interest in a corporation, qua shareholder, is the shares
26 of stock. Under applicable corporate law, the shares of stock typically confer five rights on
27 a shareholder. First, a shareholder is entitled to an aliquot share of dividends, at such time
28 (if ever) the corporation pays dividends to its shareholders. See, e.g., 9 B.E. WITKIN

1 SUMMARY OF CALIFORNIA LAW, Corporations §174 (1989). Second, a shareholder typically
2 has a right to attend meetings (including an annual meeting) of shareholders and to
3 participate in the election of directors. See, e.g., *id.* § 159. Third, a shareholder has a right
4 to inspect the corporate records, upon appropriate notice. See, e.g., *id.* § 171. Fourth, a
5 shareholder is entitled to receive an annual report of the business and financial condition
6 of the corporation. See, e.g. *id.* § 173. Finally, at such time as the corporation ceases
7 business and is liquidated, a shareholder is entitled to a proportionate share of the
8 remaining assets after the creditors are paid in full. See, e.g., *id.* § 222. There is no
9 evidence that the funds paid to Hall on the Hardings' behalf resulted from any of these
10 shareholder rights.

11 A shareholder may be entitled to compensation in consequence of the
12 performance of services (as an employee, shareholder or director) for the corporation. A
13 shareholder may also be entitled to corporate funds in consequence of doing business with
14 the corporation as an agent or by contract. There is no evidence that the funds paid to Hall
15 on the Hardings' behalf resulted from any such debt owing to them from Winning
16 Performance.

17 Thus, any monetary damages and actual injury was suffered by the
18 corporations and not by the Hardings. The Hardings did not sustain any actual damages.

21 IV. Conclusion

23 For the above reasons, Hall does not owe a debt to the Hardings because the
24 Hardings did not suffer any actual damages. Thus, Hall is entitled to judgment that the debt
25 claimed by the Hardings is dischargeable in this case.

26 As to Defendant Sondra L. Kaufeldt, judgment is granted against the Hardings
27 because of the absence of any probative evidence of any wrongdoing on her part against
28 the Hardings.

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Date: November 22, 2005.

/S/
Samuel L. Bufford
United States Bankruptcy Court

CERTIFICATE OF MAILING

I certify that a true copy of this **ORDER DENYING NONDISCHARGEABILITY OF DEBT** was mailed on 11/29/05 to the parties listed below:

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DATED: 11/29/05



DEPUTY CLERK