



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

In re:
RANDY HALL, aka DURAND D. HALL,

Debtor,

BARBARA ROGERS,

Plaintiffs,

vs.
RANDY HALL, et al.,

Defendants.

Case No. LA 04-19698SB
Adv. No. LA 04-02226SB
CHAPTER 7

**ORDER DENYING
NONDISCHARGEABILITY
OF DEBT**

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

I. Introduction

This adversary proceeding raises the issue of whether the debt owing by debtor Randy Hall¹ ("Hall") to plaintiff Barbara Rogers ("Rogers") is dischargeable pursuant to §

¹This adversary proceeding was also brought against Hall's spouse Sondra L. Kaufeldt. However, she has been dismissed as a defendant.

1 523(a)(2).² The court finds that the debt is dischargeable on the ground that Rogers has
2 proven no damages.

3 **II. Facts**

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5 The joint pretrial order contains a statement of admitted facts requiring no
6 proof, which are incorporated herein by reference, with one exception. Rogers is not a
7 shareholder in Hy-Tech.

8 Rogers is a shareholder in Winning Performance, a California corporation.
9 Hy-Tech is a British based corporation with a branch in the United States for which
10 Kimberly Harding, Rogers' daughter, works. Rogers has no interest Hy-Tech or authority
11 to act on its behalf.

12 Rogers did not pay any money for the work that Hall performed on the
13 enclosed pool house. All of the payments to Hall came from Winning Performance
14 Products, Inc. and Hy-Tech, each of which is a corporate entity that is not before the court.
15 Neither corporate entity has objected to the discharge of the debt here at issue.

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

22 **III. Analysis**

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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
2 services 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 Rogers has not satisfied the damages prong of this test. This prong requires
11 her to show that she sustained damages as the result of the debtor's fraudulent
12 representation.

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

16 There is no evidence that justifies Rogers' raid on the corporate funds of
17 Winning Performance to pay her personal contract with Hall. Her status as shareholder
18 gives her no such right to the possession or use of corporate funds for this personal
19 purpose.

20 A shareholder's sole interest in a corporation, qua shareholder, is the shares
21 of stock. Under applicable corporate law, the shares of stock typically confer five rights on
22 a shareholder. First, a shareholder is entitled to an aliquot share of dividends, at such time
23 (if ever) the corporation pays dividends to its shareholders. See, e.g., 9 B.E. WITKIN,
24 SUMMARY OF CALIFORNIA LAW, Corporations § 174 (1989). Second, a shareholder typically
25 has a right to attend meetings (including an annual meeting) of shareholders and to
26 participate in the election of directors. See, e.g., *id.* § 159. Third, a shareholder has a right
27 to inspect the corporate records, upon appropriate notice. See, e.g., *id.* § 171. Fourth, a
28 shareholder is entitled to receive an annual report of the business and financial condition

1 of the corporation. See, e.g. *id.* § 173. Finally, at such time as the corporation ceases
2 business and is liquidated, a shareholder is entitled to a proportionate share of the
3 remaining assets after the creditors are paid in full. See, e.g., *id.* § 222. There is no
4 evidence that the funds paid to Hall on Rogers' behalf resulted from any of these
5 shareholder rights with respect to Winning Performance.

6 A shareholder may be entitled to compensation in consequence of the
7 performance of services (as an employee, shareholder or director) for the corporation. A
8 shareholder may also be entitled to corporate funds in consequence of doing business with
9 the corporation as an agent or by contract. There is no evidence that the funds paid to Hall
10 on Rogers' behalf resulted from any such debt owing to her from Winning Performance.

11 Thus, any monetary damages and actual injury was suffered by the
12 corporations and not by Rogers. Rogers did not sustain any actual damages.

13 IV. Conclusion

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15 For the above reasons, Hall does not owe a debt to Rogers because she did
16 not suffer any actual damages. Thus, Hall is entitled to judgment that the debt claimed by
17 Rogers is dischargeable in this case.

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19 DATED: November 30, 2005

20 _____ /S/
21 SAMUEL L. BUFFORD
22 UNITED STATES BANKRUPTCY JUDGE
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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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DEPUTY CLERK