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FILED

MAY 10 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

NO. 281698-III

COURT OF APPEALS FOR DIVISION III

STATE OF WASHINGTON

BONNIE ANTHIS, individually, and as Personal Representative of the
Estate of HARVEY ALLEN ANTHIS, aka H. AL ANTHIS,

Appellee,

vs.

WALTER WILLIAM COPLAND,

Appellant.

RESPONDENT'S SUPPLEMENTAL BRIEF

LEAVY, SCHULTZ, DAVIS & FEARING, P.S.
JOHN G. SCHULTZ, WSBA #776
ANDREA J. CLARE, WSBA #37889
2415 W. Falls Avenue
Kennewick, WA 99336
509-736-1330

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| 1) The parties are requested to provide confirmation from the bankruptcy court that there is no bankruptcy proceeding precluding jurisdiction by the Court of Appeals. | |
| 2) Provide verification whether the bankruptcy court decided or is deciding if the LEOFF pension was available to unsecured creditors. | |
| II. CONCLUSIONS | 3 |
| 1. The documents provided from the Bankruptcy Court clearly establish that there is no bankruptcy proceeding that will preclude jurisdiction by the Court of Appeals. | |
| 2. The Bankruptcy Court did not decide or is not deciding, whether the LEOFF pension was available to unsecured creditors. The only issue pending before the Bankruptcy Court is the dischargeability of the debt of Walter William Copland to Bonnie Anthis. | |
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I. QUESTIONS PRESENTED:

1) The parties are requested to provide confirmation from the bankruptcy court that there is no bankruptcy proceeding precluding jurisdiction by the Court of Appeals.

2) Provide verification whether the bankruptcy court decided or is deciding if the LEOFF pension was available to unsecured creditors.

Answer to Question 1:

The court has requested confirmation from the bankruptcy court that there is no bankruptcy proceeding precluding jurisdiction by the Court of Appeals. The only matter presently pending before the bankruptcy court is the Adversary Proceeding filed by Bonnie Anthis to seek an adjudication that the debt incurred by Walter William Copland is non-dischargeable.

As can be seen from the records attached, which are part of the record of the United States Bankruptcy Court, the United States Bankruptcy Court issued a Discharge of Debtor on January 28, 2010. As can be seen also from the records of the bankruptcy court, on March 18, 2010, the bankruptcy court order approved the trustee's report of no

distribution, and closed the case.

Once a Chapter 7 bankruptcy case has been closed, the bankruptcy court retains jurisdiction only over disputes which clearly involve property of the estate. 28 USCA, §1334 (b).

This case involves a question as to whether or not the judgment creditor, Bonnie Anthis, can collect her judgment from payments by the LEOFF pension account, paid by the employer, and deposited in a bank account, once that payment has left the hands of the state treasurer. These are funds that did not exist at the time of the bankruptcy, the discharge, and the report by the trust of no distribution.

The Chapter 7 bankruptcy case has been closed. There is nothing pending before the bankruptcy court concerning the LEOFF pension. *In Re Joan Kahn*, 406 B.R. 269 (E.D. Penn 2009) the court discussed the role of a bankruptcy court following discharge and the closing of a no asset case. The court said, in part, to wit:

“Once a chapter 7 case has been closed, as the Debtor’s case has, the bankruptcy “court generally retains jurisdiction over only disputes which clearly involve property of the estate.” *In re Cuascut*, 91 B.R. 13, 15 (Bankr.E.D.Pa.1988); *see also Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984) (“related to” jurisdiction exists when “the outcome of [the] proceeding could conceivably have any effect on the estate being administered in bankruptcy”). Here, the Debtor’s

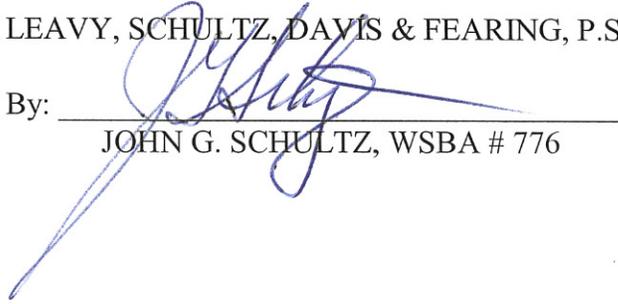
bankruptcy case has been administered and closed and the Debtor has received her discharge.”

II. CONCLUSIONS

1. The documents provided from the Bankruptcy Court clearly establish that there is no bankruptcy proceeding that will preclude jurisdiction by the Court of Appeals.
2. The Bankruptcy Court did not decide or is not deciding, whether the LEOFF pension was available to unsecured creditors. The only issue pending before the Bankruptcy Court is the dischargeability of the debt of Walter William Copland to Bonnie Anthis.

RESPECTFULLY SUBMITTED this 7 day of ^{Month} April, 2010.

LEAVY, SCHULTZ, DAVIS & FEARING, P.S.

By: 
JOHN G. SCHULTZ, WSBA # 776

IN THE COURT OF APPEALS DIVISION III

IN AND FOR THE STATE OF WASHINGTON

BONNIE ANTHIS, individually, and)
as Personal Representative of the)
Estate of HARVEY ALLEN ANTHIS,)
aka H. AL ANTHIS,)
Appellee,)
vs.) No. 281698
WALTER WILLIAM COPLAND,) (BC No. 06-2-02157-3)
Appellant.) AFFIDAVIT OF JOHN G.
SCHULTZ
_____)

STATE OF WASHINGTON)
COUNTY OF BENTON) ss
)

JOHN G. SCHULTZ, being first duly sworn, on oath, deposes and
says:

1. That I am one of the attorneys representing the plaintiff
BONNIE ANTHIS.
2. That this affidavit is submitted at the request of the court
dated April 2, 2010.
3. Attached as Exhibit "1" is a copy of the Discharge of
Debtor granted by the United States Bankruptcy Court,

Western District of Washington.

4. Attached as Exhibit "2" is the computer record of the bankruptcy filing of WALTER WILLIAM COPLAND.
5. That no issue was ever raised in the United States Bankruptcy Court, Western District of Washington, concerning whether or not the judgment creditor, BONNIE ANTHIS, could collect her judgment from the LEOFF Pension of the debtor.
6. Attached as Exhibit "3" is a copy of the Amended Complaint that was filed in the United States Bankruptcy Court for the Western District of Washington, asserting that the debt due BONNIE ANTHIS is non-dischargeable.
7. Attached as Exhibit "4" is the answer that has been filed by the bankrupt judgment debtor in the Adversary Proceeding.
8. The Adversary Proceeding is currently pending in the United States Bankruptcy Court, Western District of Washington. There is no issue pending before the bankruptcy court concerning which assets may be subject to execution.

John G. Schultz
JOHN G. SCHULTZ

~~April~~ ^{May} SUBSCRIBED AND SWORN TO before me this 7 day of
April, 2010.



Susan E Bagan
Notary Public in and for the
State of Washington,
residing at *Kenneswick*
Susan E Bagan
NAME OF NOTARY PUBLIC
Expires: *6/29/2012*

United States Bankruptcy Court
Western District of Washington
1717 Pacific Avenue
Suite 2100
Tacoma, WA 98402

Case No. 09-47782-PHB
Chapter 7

In re Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Walter William Copland
Doc #894836 H3 B55
Stafford Creek Corr Cntr
191 Constine Way
Aberdeen, WA 98520

Social Security/Individual Taxpayer ID No.:
xxx-xx-9006

Employer Tax ID/Other nos.:

DISCHARGE OF DEBTOR

The Debtor(s) filed a Chapter 7 case on October 19, 2009. It appearing that the Debtor is entitled to a discharge,

IT IS ORDERED:

The Debtor is granted a discharge under 11 U.S.C. § 727.

BY THE COURT

Dated: January 28, 2010

Philip H. Brandt
United States Bankruptcy Judge

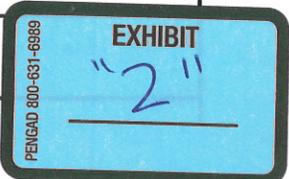
SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.



09-47782-PHB Walter William Copland
Case type: bk Chapter: 7 Asset: No Vol: v Judge: Philip H. Brandt
Date filed: 10/19/2009 Date of last filing: 03/18/2010
Debtor discharged: 01/28/2010
Date terminated: 03/18/2010

History

| Doc. No. | Dates | Description |
|-----------|---|---|
| -- | <i>Filed & Entered:</i> 10/19/2009 <i>Terminated:</i> 03/18/2010 | ● Receipt of Filng Fee Automatic docket of credit card payment |
| <u>1</u> | <i>Filed & Entered:</i> 10/19/2009 <i>Terminated:</i> 03/18/2010 | ● Chapter 7 Voluntary Petition |
| <u>2</u> | <i>Filed & Entered:</i> 10/19/2009 <i>Terminated:</i> 03/18/2010 | ● Certificate of Credit Counseling Debtor |
| <u>3</u> | <i>Filed & Entered:</i> 10/19/2009 <i>Terminated:</i> 03/18/2010 | ● Non public document SSN |
| -- | <i>Filed & Entered:</i> 10/20/2009 <i>Terminated:</i> 03/18/2010 | ● Set Petition Schedules Due Date |
| <u>4</u> | <i>Filed & Entered:</i> 10/20/2009 <i>Terminated:</i> 03/18/2010 | ● Meeting of Creditors Chapter 7 Individual No Asset AutoAssign |
| <u>5</u> | <i>Filed & Entered:</i> 10/20/2009 <i>Terminated:</i> 03/18/2010 | ● Notice of Deadline for Schedules, Statements and Lists |
| <u>6</u> | <i>Filed & Entered:</i> 10/20/2009 <i>Terminated:</i> 03/18/2010 | ● 341 Meeting of Creditors Sent to BNC for Mailing |
| <u>7</u> | <i>Filed & Entered:</i> 10/22/2009 <i>Terminated:</i> 03/18/2010 | ● BNC Certificate of Mailing - Meeting of Creditors |
| <u>8</u> | <i>Filed & Entered:</i> 10/22/2009 <i>Terminated:</i> 03/18/2010 | ● BNC Certificate of Notice |
| <u>9</u> | <i>Filed & Entered:</i> 11/02/2009 <i>Terminated:</i> 03/18/2010 | ● Complaint |
| <u>10</u> | <i>Filed & Entered:</i> 11/03/2009 <i>Terminated:</i> 03/18/2010 | ● Amend Complaint |
| <u>11</u> | <i>Filed & Entered:</i> 11/04/2009 <i>Terminated:</i> 03/18/2010 | ● Balance of Schedules |
| <u>12</u> | <i>Filed & Entered:</i> 11/04/2009 <i>Terminated:</i> 03/18/2010 | ● Chapter 7 Means Test |
| <u>13</u> | <i>Filed & Entered:</i> 11/06/2009 <i>Terminated:</i> 03/18/2010 | ● Affidavit |
| <u>14</u> | <i>Filed & Entered:</i> 11/20/2009 <i>Terminated:</i> 03/18/2010 | ● Received UNSIGNED Order |
| <u>15</u> | <i>Filed & Entered:</i> 11/23/2009 <i>Terminated:</i> 03/18/2010 | ● Order GENERIC |



| | | |
|-----------|---|---|
| -- | <i>Filed & Entered:</i> 11/30/2009 <i>Terminated:</i> 03/18/2010 | ● Trustees Meeting of Creditors Continued |
| <u>16</u> | <i>Filed & Entered:</i> 12/04/2009 <i>Terminated:</i> 03/18/2010 | ● Notice RE Certificates Required for Discharge |
| <u>17</u> | <i>Filed & Entered:</i> 12/06/2009 <i>Terminated:</i> 03/18/2010 | ● BNC Certificate of Notice |
| -- | <i>Filed & Entered:</i> 12/09/2009 <i>Terminated:</i> 03/18/2010 | ● Ch 7 Trustee Report of No Distribution |
| <u>18</u> | <i>Filed & Entered:</i> 12/29/2009 <i>Terminated:</i> 03/18/2010 | ● Certificate Financial Mgmt Course Db |
| <u>19</u> | <i>Filed & Entered:</i> 01/28/2010 <i>Terminated:</i> 03/18/2010 | ● Order Re Discharge of Debtor |
| <u>20</u> | <i>Filed & Entered:</i> 01/30/2010 <i>Terminated:</i> 03/18/2010 | ● BNC Certificate of Mailing - Order of Discharge |
| -- | <i>Filed & Entered:</i> 03/18/2010 | ● Order Approving Trustees Report of No Distribution and Closing Case |

| PACER Service Center | | | |
|------------------------|-------------------|-------------------------|-------------------------------|
| Transaction Receipt | | | |
| 04/07/2010 19:10:51 | | | |
| PACER Login: | ls0086 | Client Code: | |
| Description: | History/Documents | Search Criteria: | 09-47782-PHB Type: History |
| Billable Pages: | 1 | Cost: | 0.08 |

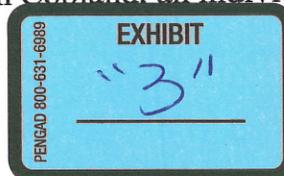
1 John G. Schultz
2 Andrea J. Clare
3 Leavy, Schultz, Davis & Fearing, P.S.
4 2415 West Falls Avenue
5 Kennewick, WA 99336
6 (509) 736-1330

7 UNITED STATES BANKRUPTCY COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON

9 In re: Walter William Copland)
10)
11 Debtor,)
12) Case No. 09-47782-PHB
13 Bonnie Anthis, individually, and)
14 as Personal Representative of the) Chapter 7
15 Estate of Harvey Allen Anthis,)
16) Adv. Proc. No. _____
17)
18 Plaintiffs,) **AMENDED COMPLAINT**
19)
20 vs.)
21)
22 Walter William Copland, an)
23 individual,)
24)
25 Defendant.)
26)
27)
28)

21 COMES NOW, the plaintiff above named, and for claim for relief alleges as follows:

- 22
- 23 1. This is an action to determine the dischargeability of a debt under 11 U.S.C. §
- 24 523(a)(6) and is brought as an adversary proceeding in accordance with Fed. R. P.
- 25 4007 and 7001 et seq.
- 26
- 27 2. The Defendant, Walter William Copland, an individual, filed a petition under



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Kennewick, WA 99336
(509) 736-1330
Fax: (509) 736-1580

1 Chapter 7 of the Bankruptcy Code in this court on October 19, 2009 in a case
2 denominated Walter William Copland, case number 09-47782-PHB, and, since
3 that day, has been a debtor and subject to the jurisdiction of this court. This court
4 has jurisdiction to hear this action under 28 U.S.C. § 151, 157(a), (b)(2)(I), and
5 1334(b).
6

7
8 3. The Plaintiff, Bonnie Anthis, both individually and in her representative capacity,
9 is a creditor of the debtor by reason of a judgment award entered on November 7,
10 2007 in the Superior Court of Benton County, in the amount of \$950,495.00.
11

12 4. On or about September 15, 2005, the defendant shot and killed Mr. Anthis by
13 placing a gun to his head and firing at point blank range. The Defendant's actions
14 constitute a willful and malicious act under 11 U.S.C. § 523(a)(6).
15

16 5. The Defendant was convicted of First Degree Manslaughter on or about May 19,
17 2006 in the Superior Court of Benton County.
18

19 6. On or about August 7, 2007, the Court of Appeals of Washington, Division III,
20 affirmed the Defendant's criminal conviction.
21

22 THEREFORE, Plaintiff prays as follows:

- 23 1. Declare the amount of the aforesaid judgment, plus interest thereon, plus the
24 costs of this proceeding and the attorney's fees incurred by Plaintiff in this
25 proceeding, is nondischargeable in bankruptcy under the terms of 11 U.S.C.
26 § 523(a)(6)
27
28

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2. Grant such other and further relief the Court may consider is appropriate.

DATED this 3rd day of November, 2009.

LEAVY, SCHULTZ, DAVIS & FEARING, P.S.
Attorneys for Plaintiff

/s Andrea J. Clare
ANDREA J. CLARE, WSBA NO. 37889
JOHN G. SCHULTZ, WSBA NO. 776

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: david@davidsmithlaw.com

DATED this 3rd day of November, 2009.

/s Andrea J. Clare
Andrea J. Clare, WSBA # 37889
John G. Schultz, WSBA # 776
Attorney for BONNIE ANTHIS
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1 David C. Smith
2 Attorney at Law
3 201 St. Helens Ave
4 Tacoma, WA 98402
5 Phone 253.272.4777
6 Fax 253.461.8888

Hon. Philip H. Brandt
Chapter 7

7 UNITED STATES BANKRUPTCY COURT
8 WESTERN DISTRICT OF WASHINGTON AT TACOMA

9 In re:

10 COPLAND, WALTER WILLIAM,
11 Debtor.

Case No.: 09-47782-PHB

Adversary Proceeding: 09-04192-PHB

12
13
14 ANTHIS, BONNIE, INDIVIDUALLY
15 AND AS PERSONAL REP FOR THE
16 ESTATE OF HARVEY ALLEN ANTHIS,

17 PLAINTIFF

ANSWER TO COMPLAINT

18 v.

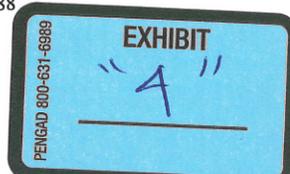
19 COPLAND, WALTER WILLIAM,
20 DEFENDANT.

21 BY WAY of Answer to the complaint, defendants respond as follows:

- 22
23 1. Admit
24 2. Admit
25 3. Admit
26 4. Deny

Page 1

David Clement Smith
ATTORNEY AT LAW
201 Saint Helens Avenue
TACOMA, WASHINGTON 98402
TELEPHONE (253) 272-4777
FAX (253) 461-8888



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- 5. Admit
- 6. Admit
- 7. As to all other allegations neither admitted nor denied in the complaint, they are denied.

WHEREFORE, having fully answered the Plaintiff's Complaint, and having asserted affirmative defenses, Defendants request then following:

- 1. For a dismissal of Plaintiff's claims;
- 2. For an award of attorney fees and costs as authorized by any recognized ground in law or equity;
- 3. For leave to timely amend so as to assert such other and further claims or defenses as seems appropriate after discovery is conducted as authorized by the Federal Civil Rules and Bankruptcy Rules.
- 4. For such other and further relief as to the court seems just.

DATED this 30th day of December, 2009.



By _____
David Smith, WSB #29824
Attorneys for Defendant

Proof of Service

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I, Stacey Costanti, declare as follows:

I am a legal assistant with the law firm of David C. Smith and am competent to be a witness herein.

On December 30, 2009, I mailed a true and correct copy of the Answer to Complaint and this Proof of Service via first-class, postage prepaid to:

Walter William Copland
DOC #894836
H3 B55
Stafford Creek Corrections
191 Constantine Way
Aberdeen, WA 98520

On December 30, 2009, the following parties were notified via ECF notification:

Andrea J Clare on behalf of Plaintiff Bonnie Anthis clare@tricitylaw.com

John G Schultz on behalf of Plaintiff Bonnie Anthis jschultz@tricitylaw.com,
johngschultz@charter.net

I declare under the penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated at Tacoma, Washington this 30th day of December 2009.

/s/ Stacey Costanti
Stacey Costanti