

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:03-bk-09021-ABB
Chapter 7

CONSTANTINE S. THANOS,
Debtor.

PETER GROPPI,
Plaintiff,

vs.

Adv. Pro. No 6:03-ap-03540-ABB

CONSTANTINE S. THANOS,
Defendant.

ORDER

This matter came on Plaintiff's, Peter Groppi, Objection to Discharge pursuant to 11 U.S.C. § 523 (a)(2)(A) to except a debt owed to him by Constantine S. Thanos, Defendant. The following Findings of Fact and Conclusions of Law are made after reviewing the evidence.

FINDINGS OF FACT

A cigar club known as the Montecristo Club opened in the fall of 2000 at the arena where the Orlando Magic of the National Basketball Association play. Debtor began selling deli sandwiches at the Montecristo Club. Plaintiff and Debtor formed a partnership to promote parties at the Montecristo Club.

The Montecristo Club is owned by two entities, Arena Entertainment, LLC ("Arena Entertainment") and Harley Entertainment, LLC ("Harley Entertainment"), each owning an equal

interest. Richard Murdoch ("Murdoch") managed and operated the Montecristo Club.

Murdoch approached the Debtor and offered to sell eleven percent (11%) of Arena Entertainment for \$180,000. Debtor offered Plaintiff an opportunity to purchase the eleven percent (11%) interest in Arena Entertainment as equal partners. Plaintiff gave Debtor \$44,360.00.

Debtor advised Plaintiff he received a tip on an unrelated stock option. Plaintiff delivered approximately \$8,750 to the Debtor for the purchase of the options through Debtor's brokerage account, Paine Webber. Plaintiff alleges Debtor did not deposit the funds in brokerage account. Debtor deposited the funds in his brokerage account. Debtor received approximately \$53,110 in total from Plaintiff.

Murdoch recommended Debtor incorporate an offshore entity, known as B.E.D.S. LLC, to hold the interest purchased by Debtor and Plaintiff in Arena Entertainment. The Debtor paid \$180,000 to Murdoch, of which the Plaintiff contributed \$44,360. Plaintiff alleges Debtor did not convey the entire \$180,000 to Murdoch. The Subscription Agreement executed by Debtor, as a representative of B.E.D.S. on February 19, 2001, evidences full payment of \$180,000.00 to Murdoch. See Plaintiff's Exhibit 1, 2 and 6.

Plaintiff learned in late 2001 neither B.E.D.S., Debtor nor Plaintiff owned any interest in Arena Entertainment. Murdoch did not have an interest in Arena Entertainment at the time of the sale. He defaulted on the Pledge Agreement by January 2001 and no longer had any interest in Arena Entertainment. See Plaintiff's Exhibit 17.

There were no financial records, bank accounts, information, or any documentation to determine the revenues generated by the club, or the amount received by Murdoch for the sale of his interest in Arena Entertainment. Murdoch, when questioned by the Court, had limited knowledge of Arena Entertainment's financial activities or records.

Plaintiff alleges Debtor made false representations to Plaintiff, regarding Arena Entertainment, to obtain money from Plaintiff. Debtor did not have knowledge of the club's poor financial condition or that Murdoch did not own the interest he sold to Debtor. The evidence does not establish false pretenses, a false representation, or actual fraud by the Debtor.

CONCLUSIONS OF LAW

A discharge under this title does not discharge any debt for money obtained by false pretenses, a false representation, or actual fraud. 11 U.S.C. § 523(a)(2)(A). Plaintiff has not established pursuant to §523(a)(2)(A) Debtor made false pretenses, a false representation or actual fraud with respect to Plaintiff.

Debtor did not know the Montecristo Club's poor financial condition, or that Murdoch no longer had an interest in Arena Entertainment to sell. Murdoch, on at least two occasions, confirmed Debtor's ownership interest. See Subscription Agreement, Plaintiff's Exhibit 1; and Murdoch letter dated December 11, 2001, Plaintiff's Exhibit 8.

Murdoch was not a credible witness. He could not produce any financial records as to where any of the funds invested by either Debtor or Plaintiff were deposited. The loss suffered by the Plaintiff was not due to the Debtor.

The evidence does not establish false pretences, a false representation, or actual fraud by the Debtor. Debtor deposited the funds for stock options into the Paine Webber brokerage account. The entire \$180,000, including Plaintiff's contribution of \$44,360, was conveyed to Murdoch. The Plaintiff has not established the acts specified in 523(a)(2)(A), and the amount paid for the Arena Entertainment interest and the stock options is not excepted from discharge under 11 U.S.C. 523 (a)(2)(A). Therefore, it is

ORDERED, ADJUDGED and DECREED that **JUDGMENT** is entered in favor of the Defendant, Constantine S. Thanos, and against the Plaintiff, Peter Groppi;

it is further

ORDERED, ADJUDGED and DECREED that Debtor's, Constantine S. Thanos, indebtedness to Plaintiff, Peter Groppi, in the amount of the debt is **DISCHARGED**.

Dated this 14th day of January 2005.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Court