

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:)	
)	
VIOLA CAROLYN LUCAS,)	Case No. 01-12092
)	Chapter 7
)	
Debtor.)	
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)	
ORVEY R. COUSATTE, Administrator of the)	
ESTATE OF IMOGENE COLLIER,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 01-5116
)	
VIOLA CAROLYN LUCAS a/k/a)	
CAROLYN LUCAS,)	
)	
Defendant.)	
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JUDGMENT ON DECISION

This adversary proceeding comes before the Court on plaintiff Orvey R. Cousatte’s, Administrator of the Estate of Imogene Collier (“Cousatte”) complaint pursuant to 11 U.S.C. § 523(a)(4) and (a)(6)¹ to except from discharge a state court judgment entered against the defendant Carolyn Lucas (“Lucas”). Cousatte also requests affirmative relief from this Court, namely to impose a constructive trust upon Lucas’ homestead and vehicle – tracing trust assets and property which Lucas allegedly converted or liquidated to acquire this property.

After careful review of the testimony and submissions the Court finds that Lucas’ conduct

¹ All statutory references are to the Bankruptcy Code, 11 U.S.C. § 101, et seq. unless otherwise specified.

during the pendency of the first appeal provides no basis for a §523(a)(4) or (a)(6) exception to discharge. The Court further finds that the fiduciary relationship supporting the state court judgment was a general fiduciary duty and insufficient for purposes of §523(a)(4). The Court further concludes that at the evidentiary hearing of this matter, Cousatte failed to present any evidence independently of the state court determination to establish an express or technical trust between Lucas and Collier. Cousatte may not prevent discharge of the state court judgment on the basis of the fiduciary fraud exception of §523(a)(4). Lucas committed neither embezzlement nor larceny and Cousatte may not prevent discharge of the state court judgment under this exception.

The Court further concluded that the collateral estoppel effect of the undue influence judgment affords no basis on which to find a willful injury and Cousatte has failed independently of the state court judgment to prove a willful injury. The state court judgment may not be excepted from discharge under §523(a)(6). Having ruled against Cousatte on both §523(a)(4) and (a)(6), the Court finds it unnecessary to reach the constructive trust issue.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment on the complaint be and it is hereby entered for defendant Viola Carolyn Lucas, each party to bear their respective costs.

Dated this 5th day of December, 2002.

ROBERT E. NUGENT, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **Judgment on Decision** were deposited in the United States mail, postage prepaid on this 5th day of December, 2002, to the following:

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