

DEBTOR/CREDITOR

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Silence Is Not So Golden

Alma Energy, LLC, a coal mining company, filed a Chapter 11 case. In order to continue its mining operations and reorganize, Alma borrowed \$2,000,000 from Pikeville Energy Group. In exchange for the right to purchase coal, Pikeville was willing to defer payment of the loan in order to aid the debtor's reorganization. However, in the disclosure statement filed in connection with its plan of reorganization, the debtor stated that it was not obligated to repay the loan from Pikeville. Pikeville never corrected this statement.

After Alma's reorganization failed and case was converted to Chapter 7, Pikeville filed an administrative claim for its loan. The bankruptcy appellate panel denied Pikeville's claim, concluding that Pikeville was bound by Alma's statements, because the court had relied on them when it confirmed the failed plan of reorganization.

Pikeville Energy Group v. Spradlin (In re Alma Energy, Inc.), 439 B.R. 92 (Bankr. 6th Cir. 2010).

Trust but Verify

Bill Heard Chevrolet offered car purchasers extended service contracts from United Service Protection ("USP"), an unrelated entity. The agreement between Bill Heard and USP required the dealership to collect payment for the extended service contracts, deposit USP's money in a segregated bank account "in a fiduciary capacity as trustee", and remit to USP monthly. Bill Heard did not segregate the funds, but deposited them in its operating account.

After Bill Heard filed its Chapter 11 case, its bank sought permission from the bankruptcy court to set off the monies in the operating account against the bank's loans to Bill Heard. USP opposed the bank's request, claiming that the funds in the operating account were really USP's money. USP asked the court to impose a constructive trust on the

funds, because Bill Heard violated the agreement by not depositing USP's money in a segregated account.

The Alabama bankruptcy judge ruled in favor of the bank, because the bank did not know that Bill Heard was depositing USP's funds in its operating account.

United Service Protection v. Bill Heard Enterprises (In re Bill Heard Enterprises), 438 B.R. 745 (Bankr. N.D. Ala. 2010).

Scammed Trustee Discharged

Dad was trustee of a trust he set up for Son's benefit. Unfortunately, Dad was also the victim of an "advance-fee" Internet scam. Dad "invested" \$149,709 of the trust's money to free a large inheritance in Ghana from bureaucratic delays in exchange for 15 percent of the inheritance. Alas, the trust never received any part of the promised inheritance.

Dad was forced to seek bankruptcy protection. Son sought to prevent Dad's discharge of liability for the trust monies lost. Son argued that Dad's risky "investment" violated Indiana law, and was a nondischargeable defalcation while acting in a fiduciary capacity.

The bankruptcy judge disagreed. Dad may have been "gullible and even quintessentially stupid"; but, he did not knowingly intend to harm Son. Dad could discharge his obligation to repay the trust.

Hunt v. Hunt (In re Hunt), 439 B.R. 690 (Bankr. N.D. Ind. 2010).

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