



The Arrow

IF YOU CAN'T COLLECT, WHY NOT CONVICT?

In a Sixth Circuit Court of Appeals decision, the Court held that discharge of the underlying debt in a Chapter 7 bankruptcy did not preclude the creditor from pursuing criminal prosecution of the debtor for the debtor's pre-petition fraudulent action. *In re Daulton*, 966 F. 2d 1025 (6th Cir. 1992).

In the *Daulton* case, the debtor borrowed monies from two banks by granting a security interest in his tobacco crop. Pursuant to local custom and Federal law, the banks notified the warehouse where the debtor stored his tobacco of their security interest in the debtor's crop. The notice to the warehouse insured that the proceeds from the sale of the crops would be paid to the banks as secured creditors. The debtor, however, sold his crop in the name of his 14 year-old daughter and kept the proceeds for himself instead of paying the secured creditors.

The debtor subsequently filed a Chapter 7 bankruptcy. The claims of the two banks were deemed unsecured claims and were discharged through the bankruptcy.

After the discharge, one of the banks filed a criminal Complaint against the

debtor for the alleged fraudulent sale of the tobacco crop. The debtor was subsequently charged for said offense. The debtor then filed an action in federal court seeking an injunction against the bank to stop it from pursuing its criminal charges, due to the fact that the claim was discharged in bankruptcy.

The bank claimed that it was not interested in debt collection, and the only reason it filed criminal charges was to make a statement to the farming community. The bank was prohibited from seeking restitution from the debtor, but the District Court refused to enjoin the state criminal proceedings against the debtor. The Court of Appeals affirmed.

We should note for our readers, that the Bankruptcy Code precludes the use of criminal actions to collect debts which have been discharged in bankruptcy. In other words, a creditor cannot use the criminal process solely to obtain restitution. The state, however, is not prohibited from punishing the debtor by use of other means, including fines, imprisonment, or restrictive probation.

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