

5641-000

**FILED**

**JUN 03 1997**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DOROTHY A. EVANS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
ROBERT LEONARD BLY,	)	
f/d/b/a BLY & ASSOCIATES, INC.,	)	
a/k/a BLY & ASSOCIATES,	)	
a/k/a ROBERT BLY & ASSOCIATES,	)	
	)	Case No. 96-04977-W
Debtor.	)	Chapter 7
	)	
LARRY MCCRAY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ROBERT LEONARD BLY,	)	
	)	
Defendant.	)	Adversary No. 97-0115-W

JUDGMENT

There comes on for decision the Complaint for Denial of Discharge of Specific Debt ("Complaint") filed herein by Plaintiff, Larry McCray, on April 2, 1997. The Court finds as follows:

1. Jurisdiction of this adversary proceeding is conferred on this Court by 28 U.S.C. § 1334.
2. This adversary proceeding is grounded in 11 U.S.C. § 523(a)(2), (4) and (6).
3. Plaintiff is the holder of an unsecured claim against the Defendant/Debtor, Robert Leonard Bly. That claim has been reduced to two (2) Judgments entered in the District Court of Tulsa County, State of Oklahoma. Copies of those Judgments are annexed as Exhibits Nos. 1 and 2.

DOCKETED 6-3, 1997  
Clerk, U.S. Bankruptcy Court  
Northern District of Oklahoma

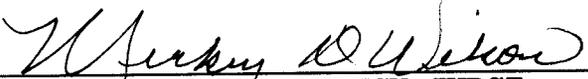
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4. The Summons In An Adversary Proceeding ("Summons") was issued in this proceeding on April 2, 1997. Said Summons was served upon Mr. Bly and his attorney of record as shown by the Return thereof filed herein on April 3, 1997.

5. Mr. Bly did not file an Answer to the Complaint within thirty (30) days as commanded by the Summons and is in default thereof.

6. The allegations raised in the Complaint are true and correct. Specifically, and as stated in Exhibit No. 1, the debt owed by Mr. Bly to Plaintiff is one for the misappropriation of funds entrusted by Plaintiff to Mr. Bly and that he may not obtain a discharge of that debt pursuant to 11 U.S.C. § 523(a)(2), (4) and (6).

IT IS THEREFORE ORDERED that the Judgments annexed hereto as Exhibits Nos. 1 and 2, entered in favor of Plaintiff and against Mr. Bly are debts not discharged by virtue of this Case pursuant to 11 U.S.C. § 523(a)(2), (4) and (6).

  
UNITED STATES BANKRUPTCY JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

J. Patrick Mensching 6136  
BARROW GADDIS GRIFFITH & GRIMM  
610 South Main, Suite 300  
Tulsa, OK 74119  
(918) 584-1600  
(918) 585-2444 (Fax)

ATTORNEYS FOR PLAINTIFF

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abh 5/30/97  
Exhibits Nos. 1 & 2

DISTRICT COURT  
IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

JUL 27 1994

~~DISTRICT COURT  
FILE~~

~~1994~~

LARRY MCCRAY d/b/a VISUAL SERVICES )  
SNACK BAR, )  
  
Plaintiff, )  
  
vs. )  
  
ROBERT BLY, )  
  
Defendant. )

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA. COUNT

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COURT

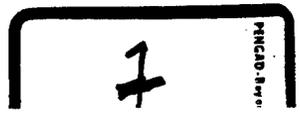
Case No.: CJ 89-2681

JOURNAL ENTRY OF JUDGMENT

This matter came on for trial on May 11, 1994. The Plaintiff was present and represented by his attorneys, Mark D. Lyons and Tom Plake of LYONS & CLARK. The Defendant was present in person and represented by his attorney Joel Kruger.

The Plaintiff and Defendant waived the reporting of voir dire of the jury and both parties participated in and completed the voir dire examination. The jury was selected, sworn and impaneled. The trial commenced and was reported by Jackie Bates.

The Plaintiff made an opening statement and called the following witnesses in his case in chief: 1) John Bates; 2) Charles Maybee; 3) Bobby Clark; 4) Robert Bly; and 5) Larry McCray. In addition to the testimony of the witnesses, the Plaintiff offered certain exhibits in evidence that were accepted by the trial court. The Defendant cross examined all of the Plaintiff's witnesses. The Plaintiff presented direct and circumstantial evidence of the Defendant, Robert Bly, embezzling money from Larry McCray and his business, Visual Services Snack



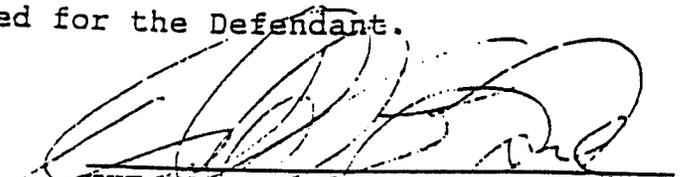
Bar, while Mr. Bly was working in a fiduciary capacity as an accountant. The Plaintiff put on evidence of losses of \$76,800.00 and an additional \$267.50 embezzled through unauthorized pay raises. The sums embezzled were taken during the course and conduct of Mr. Bly's receipt and possession of business proceeds entrusted to his care. The Plaintiff rested.

The Defendant gave an opening statement and called Robert Bly and Pam Bly as his witnesses and presented evidence that Mr. Bly did not, in his capacity as accountant and bookkeeper for Larry McCray d/b/a Visual Services Snack Bar, embezzle funds entrusted to him in his position as the accountant and bookkeeper. In addition to the testimony of the witnesses, the Defendant offered certain exhibits in evidence that were accepted by the trial court. The Defendant further offered evidence that he had been punished enough by the November 15, 1988, incident in that he had suffered a felony conviction, had been unable to pursue his occupation as an accountant, etc. Neither side offered any rebuttal testimony. Both parties rested.

The parties submitted jury instructions and the court heard argument concerning proposed instructions. The jury instructions were read to the court and the Plaintiff and Defendant both gave closing arguments. After due deliberation, the jury returned an award for the Plaintiff for actual damages in the sum of \$20,001.00 on the conversion claim and \$25,000.00 in punitive damages. The matter was submitted to the jury and the swearing of the bailiff was waived by both parties. The court submitted a jury instruction

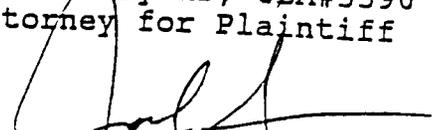
on punitive damages after making a specific finding that the Plaintiff had proven by clear and convincing evidence facts and circumstances necessary to allow the cap to be lifted on punitive damages. The court's finding of clear and convincing evidence was made on the record and Plaintiff's and Defendant's counsel had an opportunity to argue against punitive damages and to note his objection.

The presiding Judge David Winslow accepted the verdict from the jury. After the jury verdict was read, the court inquired of either party whether they desired the jury polled. After noting that the verdict was 11 jurors for the Plaintiff and 1 for the Defendant, Defendant's counsel, Joel Kruger requested that the jury be polled and the jury was polled in open court and it was determined that 11 jurors did in fact vote for and agree on actual damages of \$20,001.00 and \$25,000.00 on punitive damages for the Plaintiff and that 1 juror voted for the Defendant.

  
THE HONORABLE DONALD C. LANE  
DISTRICT JUDGE

APPROVED AS TO FORM:

  
Mark D. Lyons, OBA#5590  
Attorney for Plaintiff

  
Joel Kruger, OBA#5128  
Attorney for Defendant

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

DISTRICT COURT  
FILED  
AUG 30 1994  
SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA, TULSA COUNTY

LARRY MCCRAY d/b/a VISUAL  
SERVICES SNACK BAR,

Plaintiff,

vs.

ROBERT BLY,

Defendant.

CJ 89-2681

JUDGMENT FOR COSTS

Now on this 25<sup>th</sup> day of August, 1994, the matter of Plaintiff's Motion for Costs comes on for consideration by this Court. After reviewing such Motion and the file, the Court finds that the Plaintiff's Motion was filed on May 24, 1994, and with no responsive pleading having been filed by the Defendant, the Court finds that the Plaintiff's Motion for Costs should be granted pursuant to Rule 4(e) of the Rules for the District Courts.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff is awarded the costs of this action, against the Defendant, ROBERT BLY, in the amount of \$775.77.

DONALD C. LANE

HONORABLE DONALD C. LANE  
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF SERVICE

I, Mark D. Lyons, hereby certify that on the 30<sup>th</sup> day of August, 1994, I mailed a true and correct copy of the above and foregoing Judgment for Costs, with proper postage thereon fully prepaid, to: Joel L. Kruger, 6520 S. Lewis, Suite 15, Tulsa, Oklahoma 74136-1041.

Mark D. Lyons  
Mark D. Lyons

I, Sally Howe Smith, Court Clerk, for Tulsa County Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the Instrument herewith set out as appears of record in the Court Clerk's Office of Tulsa County, Oklahoma.

this 30 day of Aug 19 94

By Sally Howe Smith Deputy Sally Howe Smith  
Court Clerk