

IN THE SUPREME COURT OF THE STATE OF NEVADA

HITTER FAMILY LIMITED PARTNERSHIP,
A NEVADA LIMITED PARTNERSHIP;
HERMAN K. TERMOHLEN, AN INDIVIDUAL
AND GENERAL PARTNER OF THE HITTER
FAMILY LIMITED PARTNERSHIP; HELEN
TERMOHLEN, AN INDIVIDUAL AND
GENERAL PARTNER OF THE HITTER
FAMILY LIMITED PARTNERSHIP,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE MARK R. DENTON, DISTRICT
JUDGE,

Respondents,

and

CHARLES R. ABBOTT, AN INDIVIDUAL;
AND BRUCE Y. YATES, AN INDIVIDUAL,

Real Parties in Interest.

No. 36470

FILED

NOV 15 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER GRANTING IN PART AND DISMISSING IN PART PETITION FOR

WRIT OF MANDAMUS OR PROHIBITION

This is an original proper person petition for a writ of mandamus or prohibition challenging a district court order directing petitioners to turn over stock certificates and to produce personal and corporate records in aid of execution on a default judgment. Specifically, petitioners contend that the personal liability of Herman and Helen Termohlen for the debts at issue was discharged in bankruptcy, and that the partnership is dissolved and has no assets. Real parties in interest contend that the partnership is still active and has funds, and that the bankruptcy discharge of the Termohlens did not include the debts owed to them.

As an initial matter, this court may not consider the petition as it pertains to the partnership. The partnership is not represented by counsel, and a non-lawyer principal may not represent a business entity such as a

limited partnership. See Sunde v. Contel of California, 112 Nev. 541, 915 P.2d 298 (1996); Salman v. Newell, 110 Nev. 1333, 885 P.2d 607 (1994). Accordingly, the petition is dismissed with respect to the partnership.

11 U.S.C. § 524(a)(2) provides that a bankruptcy discharge operates as a permanent injunction against "the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor." Here, the Termohlens received a discharge of any personal liability they had to Abbott and Yates. Abbott and Yates had notice of the bankruptcy and had the opportunity to protect their interests in the bankruptcy, but failed to do so.¹ Therefore, the bankruptcy discharge prohibits collection of these debts from the Termohlens personally.

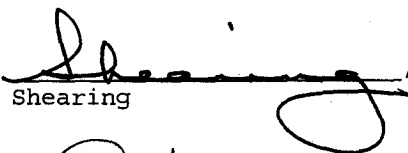
Accordingly, the petition is granted in part. The clerk of this court shall issue a writ of mandamus directing

¹Abbott and Yates argue that their claims are an exception to the discharge injunction, making sweeping conclusory statements but citing no authority for this argument. As the statements are not supported by citation to authority, they need not be considered. See SIIS v. Buckley, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984). In addition, while a debt incurred through fraud may be excepted from discharge, see 11 U.S.C. § 523(a)(2), the creditor to whom the debt is owed must file a timely objection to the dischargeability of the debt with the bankruptcy court, and the bankruptcy court must rule that the debt is excepted from discharge. See 11 U.S.C. § 523(c)(1). Here, Abbott and Yates did not file a complaint objecting to dischargeability, even though it is undisputed that they had notice of the bankruptcy. Accordingly, any personal liability of the Termohlens Abbott based on the promissory notes was discharged.

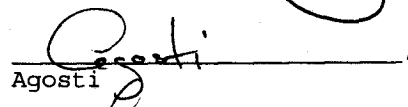
Abbott and Yates appear to argue that the Termohlens fraudulently transferred the funds Abbott and Yates allegedly lent to the Termohlens. However, the complaint filed in district court did not state a claim for fraudulent transfer. See NRCPC 9(b) (requiring fraud claims to be pled with particularity). If Abbott and Yates have evidence that the Termohlens engaged in fraudulent activities after the bankruptcy petition was filed and that they were thereby injured, such claims would not be subject to the bankruptcy discharge injunction. If the statute of limitations has not expired, then Abbott and Yates could bring an action based on conduct occurring after the bankruptcy.

the district court to vacate that portion of its order requiring the Termohlens to turn over their personal assets in aid of execution, or requiring the Termohlens to turn over financial records not related to the partnership.² The writ shall also direct the district court to refrain from entering any order in the future that would violate the bankruptcy discharge injunction.

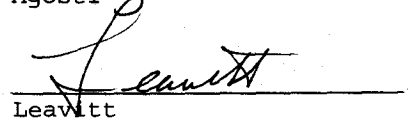
It is so ORDERED.³



Shearing J.



Agosti J.



Leavitt J.

cc: Hon. Mark R. Denton, District Judge
Kolesar & Leatham, Chtd.
Helen Termohlen
Herman K. Termohlen
Clark County Clerk

²We note that as we dismiss the petition with respect to the partnership, Abbott and Yates may still proceed to execute on assets of the partnership. Also, the Termohlens, as the general partners of the partnership, may be subject to examination and may be ordered to produce the partnership's records in aid of execution.

³In light of this order, we vacate the temporary stay granted by this court by order dated August 31, 2000.