

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In Re:)	
)	
MARVIN LEE WILCOX,	)	Case No.: 10-6056
PAMELA JEAN WILCOX,)	
	)	APPEAL FROM UNITED STATES
Debtors,	)	DISTRICT COURT FOR THE
	)	WESTERN DISTRICT OF
	)	OKLAHOMA;
	)	CASE NO.: CIV-09-186D
	)	HONORABLE TIMOTHY DeGIUSTI
OKLAHOMA DEPARTMENT OF)	
SECURITIES <i>ex rel.</i> IRVING L.	)	BANKRUPTCY CASE NO.
FAUGHT, Administrator, et al.,	)	BK-07-10610-BH
	)	ADVERSARY NO. 07-1226-BH
Plaintiff/Appellee,)	
)	
v.)	
)	
MARVIN LEE WILCOX,)	
)	
Defendant/Appellant.)	

**SUPPLEMENTAL BRIEF AS TO WHY THIS APPEAL SHOULD NOT BE
DISMISSED FOR LACK OF A PRESENT CASE IN CONTROVERSY**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA CASE NO.: CIV-09-186D;
THE HONORABLE TIMOTHY DeGIUSTI

ORAL ARGUMENTS
REQUESTED

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COMES now, Appellants/Debtors, Marvin Lee Wilcox and Pamela Jean Wilcox, pursuant to this court's Order dated October 19, 2010 that would show this court that there remains a present case in controversy on this appeal.

STATEMENT OF THE CASE

The Appellants, Marvin Lee Wilcox and Pamela Jean Wilcox, hereinafter referred to as ("Wilcox"), were denied a discharge by an Order of the Bankruptcy Court dated December 12, 2008 in Case No. 07-10610, Adversary No. 07-1226. *See* record on appeal pages 570 – 576.

Subsequently, on April 6, 2010, the State Court Judgment against Marvin Lee Wilcox and Pamela Jean Wilcox was reversed and remanded to the District Court of Oklahoma County for further proceedings, and to determine the amount, which may be owed by Wilcox.

On October 18, 2010, the District Court of Oklahoma County entered Judgment as to Liability against the Wilcox, and reserved the question of the amount owed to be determined, either by a jury or non-jury trial.

Even though the original judgment of the District Court was reversed by the Oklahoma Supreme Court, there is presently pending a case to determine the amount owed by the Wilcox in the District Court of Oklahoma County.

At this point in time, the claim against the Wilcox by the Oklahoma Department of Securities is an un-liquidated claim, which has already been ruled by the Bankruptcy Court to be non-dischargeable. That claim by the Oklahoma Securities Commission will be, at some point, liquidated, and the dischargeability issue has already been determined by the Bankruptcy Court.

ARGUMENTS AND AUTHORITIES

PROPOSITION I

THE DISCHARGABILITY ISSUE AS TO THE APPELLANTS, MARVIN LEE WILCOX AND PAMELA JEAN WILCOX REMAINS AN ACTIVE CASE IN CONTROVERSY.

At the present time due to the reversal by the Oklahoma Supreme Court, the amount of any claim owed to the Oklahoma Department of Securities is un-liquidated; however, dischargeability of that claim has already been determined by the Bankruptcy Court. The Oklahoma County District Court is moving forward to determine the amount of this claim against Wilcox, and once that has been determined, it will become a liquidated amount, which is still subject to the non-dischargeability order of the bankruptcy court.

Whether this claim has been liquidated or not the fact remains that the non-dischargeability of the claim has been determined and the question of whether the bankruptcy court properly ruled that the claim is non-dischargeable remains an

open case and controversy between the Oklahoma Department of Securities and Wilcox.

If an appellant might be entitled to some measure of effective relief then an appeal is not moot. *See, In re: Long Shot Drillings, Inc.*, 224 BR 473 (10th Cir. BAP 1998). In this case, the claim of the Department of Securities is presently un-liquidated, but it remains a claim. The bankruptcy court has determined that said claim, whatever amount, to be non-dischargeable. Therefore, the appeal is not moot and there remains a remedy on appeal as to the dischargeability of the Oklahoma Department of Securities claim.

For this reason, the appeal presently before this Circuit Court should not be dismissed, as it has already been briefed and the claim, although un-liquidated, is still a claim and has been ruled non-dischargeable by the bankruptcy court.

CONCLUSION

The appeal in the matter of the Wilcox remains a live case in controversy since the dischargeability of any claim by the Oklahoma Department of Securities has been determined to be non-dischargeable, and the only thing to be determined at this point is liquidation of that claim to an amount in the Oklahoma County District Court.

WHEREFORE, premises considered, Appellants, Wilcox pray that this appeal will not be dismissed and that that the case be decided on the issues before this court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November 2010, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and I served the attached document by Regular U.S. Mail on the following, who are registered participants of the ECF System:

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I also hereby certify that:

(1) All required privacy redactions have been made and, with the exception of those redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk, and;

(2) The digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program (Symantec AntiVirus, Version 10.1.5.5000, updated 10/04/2007, Revision 20) and, according to the program, are free of viruses.

/s/ Robert N. Sheets

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

 x this brief contains 1088 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

/s/ Robert N. Sheets