UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

David A. Russ, BKY 4-87-2332

Debtor. ORDER

At Minneapolis, Minnesota, on this 7th day of February, 1996.

The above-entitled matter arises by objection filed by the Chapter 7 Trustee, James Ramette ("Trustee"), to Claim No. 10. The matter came on for hearing before the undersigned on January 18, 1996. Appearances were noted in the record.

FACTS

1. David A. Russ filed for protection under Chapter 7 of the United States Bankruptcy Code on July 10, 1987, and subsequently received a discharge from prepetition indebtedness.

2. Audrey Mariska filed an unsecured claim ("Claim No. 10") against the estate in the amount of $11,148.58.

3. On September 2, 1988, the Trustee filed a Final Report, Account and Certificate of Audit Before Distribution. No objections were made to the proposed distribution which included a dividend to Audrey Mariska under Claim No. 10 in the amount of $130.49. The Trustee completed the distribution of estate assets to the allowed claimholders. On July 5, 1989, the bankruptcy case was closed.

4. On September 24, 1992, Audrey Mariska died.

5. On October 6, 1992, Karen M. Atkinson ("Karen") and Craig M. Mariska ("Craig"), the daughter and son of Audrey Mariska, were appointed co-representatives of the estate of Audrey Mariska. Their appointment was a matter of public record.

6. On May 17, 1993, Merit Acquisitions, Inc. ("Merit") made

several offers to purchase assignments of claims in the above-entitled bankruptcy case despite the fact that the case was closed. On or about May 24, 1993, Karen received an offer from Merit in her official capacity as personal representative to purchase an assignment of Claim No. 10. Merit was actually unaware that Karen was not the sole representative of the estate of Audrey Mariska.

7. Karen, on behalf of the estate of Audrey Mariska, accepted the offer from Merit which tendered a check in the amount of $200.00 as consideration for the assignment. Karen endorsed the check made payable to Audrey Mariska in her official capacity, cashed it, and executed an unconditional transfer and assignment of Claim No. 10 in favor of Merit.

8. Craig did not execute the assignment or endorse the check.

9. On August 12, 1993, the above-entitled bankruptcy case was reopened.

10. On January 27, 1994, Merit filed its Evidence of Transfer of Claim pursuant to Rule 3001 of the Federal Rules of Bankruptcy Procedure. On January 28, 1994, Merit sold all its right, title, and interest in Claim No. 10 to Glen Skajewski ("Skajewski").

11. On February 1, 1994, Skajewski filed a copy of his Assignment of Claim No. 10 and Evidence of Transfer pursuant to Rule 3001.

12. On February 8, 1993, Skajewski filed a notice of appearance and request for notice pursuant to 11 U.S.C. § 1109(b), Federal Rules of Bankruptcy Procedure 2002(g), 2002(i), 9010(b), and Local Rule 403, whereby he specifically requested to be added to the mailing matrix and receive copies of all notices and papers

in connection with the case.

13. On February 16, 1994, this Court sent out a Notice Regarding the Assignment of Claim No. 10.

14. The Trustee, having discovered unadministered assets of the estate in the form of stock, sought to sell the asset for $350,000. On February 25, 1994, the Trustee served and filed a Notice of Motion for Approval of Sale of Property.

15. Despite the fact that the estate of Audrey Mariska had been closed, Karen and Craig (collectively "PRs"), apparently of the view that Claim No. 10 was worth more than what was originally paid, filed an objection to the assignment of Claim No. 10 and brought a motion to rescind the assignment to Merit in their capacities as co-representatives on March 9, 1994.

16. The notice and objection was <u>not</u> served upon Skajewski, but was served on Merit, which no longer held an interest in Claim No. 10. Skajewski was unaware that any objection had been filed relating to Claim No. 10.

17. On March 16, 1994, the estate, after approval by this Court, sold to stock for $350,000, said sum being available to distribute among allowed claims.

18. On April 12, 1994, a default order was entered by this Court rescinding the assignment of Claim No. 10 to Merit (the "April 12, 1994, Default Order"). Apparently, no notice of entry of the April 12, 1994, Default Order was served upon Skajewski.

19. On November 16, 1995, the Trustee, after investigation, objected to the allowance of Claim No. 10 on the grounds that it was unclear as to whom future distributions should be made. Both Skajewski and the PRs claim to be the legal and authorized holders

of Claim No. 10.

20. The PRs, among other things, assert that Minn. Stat. § 524.3-717 requires the concurrence of all actions connected with the administration and distribution of a decedent's estate when two or more persons are appointed as representatives. Since the assignment of Claim No. 10 from the estate of Audrey Mariska to Merit was not effectuated by the concurrence of both co-representatives, the PRs argue that the transfer was made without the requisite authority and is therefore invalid. The PRs alternatively argue that the contract or assignment should be avoided due to a unilateral mistake on the part of Karen with respect to the value of her claim against the bankruptcy estate.

21. Skajewski contends that he was a good faith purchaser who did not receive notice of the prior rescission.

DISCUSSION

It is elementary that personal representatives of a decedent's estate are fiduciaries who generally have the same power over title to property of the probate estate that an absolute owner would have and may, accordingly, sell and otherwise administer estate assets in the ordinary course. Minn. Stat. § 524.3-711. If joint or co-personal representatives are appointed, it is the general rule that each stands upon equal ground and the concurrence of both is required with respect to all acts connected with the administration and distribution of the probate estate. Id. § 524.3-717. However, "[p]ersons dealing with a co-representative if actually unaware that another has been appointed to serve or if advised by the personal representative with whom they deal that the personal representative has authority to act alone . . . , are as fully

protected as if the person with whom they dealt had been the sole personal representative." Id. In that vein, a "person who in good faith . . . deals with the personal representative for value is protected as if the personal representative properly exercised power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise." Id. § 524.3-714(a). Cf. id. § 524.3-714(b) ("If property is wrongfully transferred by a person acting as a personal representative to a person who is not in good faith, a subsequent good faith purchaser is protected as if the original transferee dealt in good faith. Any purchaser in good faith is protected as if all prior transfers were made in good faith.").

There is no dispute in this case that Merit had no actual knowledge that another representative had been appointed to serve with Karen and that it was acting in good faith when it purchased Claim No. 10 and procured the assignment. Certainly, there can be no doubt that Skajewski was a good faith purchaser, without knowledge, who acquired the claim and assignment for value from a representative of the Audrey Mariska estate who was acting in the ordinary course of administering the probate estate. Additionally, since Skajewski was not served with the objection to the assignment of Claim No. 10 or the motion to rescind the assignment despite being the legal holder of the claim, this Court's April 12, 1994, Default Order rescinding the assignment to Merit has no legally operative effect and is not binding upon him.

The PRs' argument that the assignment should be rescinded due to a unilateral mistake by one of the personal representatives is

disingenuous. Unilateral mistake is not a basis under the law for rescission unless there is some ambiguity, fraud, or misrepresentation on the part of the offeror. North Star Ctr. v. Sibley Bowl, Inc., 295 Minn. 424, 426, 205 N.W.2d 331, 332 (1973)(per curiam); Gartner v. Gartner, 246 Minn. 319, 322, 74 N.W.2d 809, 812 (1950). In other words, relief from a unilateral mistake will only be granted if the other party to the contract has knowledge of the mistake, Becker v. Bundy, 177 Minn. 415, 418, 225 N.W. 290, 291 (1929), or is guilty of inequitable conduct. Norris v. Cohen, 223 Minn. 471, 477-79, 27 N.W.2d 277, 281 (1947); Nadeau v. Marland Cas. Co., 170 Minn. 326, 329, 212 N.W. 595, 596 (1927). Thus, grounds for recission will not lie simply because a party to a contract makes what with the benefit of twenty-twenty hindsight proves to be a mere error in judgment.

Merit was speculating in the purchase of claims which the Bankruptcy Code and Rules specifically allow. At the time of the contract, Karen believed that her claim in the bankruptcy case had virtually no value. Her assumption would have been undoubtedly correct had the additional asset that was discovered after the case was closed not been unearthed or had events unraveled differently in subsequent proceedings in the bankruptcy case. The fact that the claim may now be worth more than she thought at the time of the sale is not grounds for rescission in this case due to unilateral mistake.

Accordingly, and for reasons stated, IT IS HEREBY ORDERED:

1. That the April 12, 1994, Default Order entered by this Court is in all things VACATED NUNC PRO TUNC; and

2. That the co-representatives of the probate estate of Audrey Mariska, Karen M. Atkinson and Craig M. Mariska,

have absolutely no right, title, or interest in Claim No. 10, said right, title, and interest belonging solely to Glen Skajewski until further order of this Court.

SO ORDERED.

Nancy C. Dreher
United States Bankruptcy Judge