

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	
	§	
FUNNEL SCIENCE INTERNET	§	
MARKETING, LLC	§	
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	§	
RONALD PYKE, <i>et al.</i> ,	§	Case No. 4:15-cv-275
	§	Consolidated Case No. 4:15-cv-46
	§	(Administratively Closed)
	§	
Appellants,	§	USBC Case No. 14-42120
	§	
v.	§	
	§	
FUNNEL SCIENCE INTERNET	§	
MARKETING, LLC,	§	
	§	
Appellee	§	

MEMORANDUM OPINION AND ORDER

Now before the Court is the consolidated set of cross-appeals arising from an involuntary Chapter 7 bankruptcy case filed against Funnel Science Internet Marketing, LLC (Appellee, “Funnel Science” or “Alleged Debtor”) on the petition of Ronald Pyke, Virginia Rivers, Drop Visionary Branding (“DVB”) and David Rice¹ (collectively, Appellants or “Petitioning Creditors”) and the subsequent dismissal thereof by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division. In the first case, filed as *Funnel Science v. Pyke, Rivers, DVB and Rice*, 4:15cv46, Funnel Science was the titular Appellant and Pyke, *et al.*, the

¹ Mr. Rice is not named as a party. Although Funnel Science named him in its appeal under the original case number 4:15cv46, he was not named as a party in the Petitioning Creditors’ appeal under this case number 4:15cv275. On consolidation, the caption of this case number remained unchanged. Although Appellee Funnel Science states in its Brief that Mr. Rice should remain as a party, it is not necessary to identify him as such, given the Court’s determination herein.

Appellees. However, on April 23, 2015, Pyke, *et al.* (but without Rice), subsequently filed the instant case, *Pyke v. Funnel Science*, 4:15cv275. The parties then filed a joint motion to consolidate the two cases and a joint motion to extend the briefing schedule and page limits.

This Court granted both, closed the 4:15cv46 case and consolidated both appeals under the instant Case No. 4:15cv275. Resultantly, the Pyke, *et al.*, parties are the notional Appellants in this case and Funnel Science the Appellee. In fact, as noted above, these are actually cross-appeals and each side has filed an Opening Brief (“Brief”) and a Reply Brief (“Reply”). Perhaps it would have been more appropriate to designate the parties as “Appellant” and “Cross-Appellant.” However, the Court will continue to address the parties as they are docketed. Appellee Funnel Science filed its Brief on June 25, 2015 (Doc. No. 16).² Appellants filed their Brief on July 23, 2015 (Doc. No. 17). Appellee filed its Reply on August 6, 2015 (Doc. No. 18). Appellants filed their Reply on August 21, 2015 (Doc. No. 19). Thus, briefing is complete and the matter is ripe for decision.

At issue are various orders and the Final Judgment entered by the Bankruptcy Court, the Hon. Brenda T. Rhoades, Chief United States Bankruptcy Judge. Appellee appeals from the Order Dismissing Involuntary Bankruptcy (USBC Doc. No. 21) and the Order Denying Motion for Reconsideration (USBC Doc. No. 32), and cross-appeals from the Final Judgment (USBC Doc. No. 33) and the Memorandum Opinion and Orders (USBC Doc. Nos. 47 and 57) on Appellants’ two Motions for Reconsideration. Appellants appeal from the Final Judgment (USBC Doc. No. 33) and both Memorandum Opinion and Orders (USBC Doc. Nos. 47 and 57).

² The Court will refer to docket entries in the Bankruptcy action as “USBC Doc. No. XX” and to docket entries in the instant case as “Doc. No. XX.”

The parties have briefed specific issues: six by Appellee and two by Appellants.

Appellate jurisdiction over these cross-appeals is proper in this Court pursuant to 28 U.S.C. § 158(a).

After reviewing the parties' briefs, the record in this case, and the applicable law, the Court **AFFIRMS** the orders of the Chief Bankruptcy Judge.

I. BACKGROUND

The following factual background is compiled from the Orders of the Bankruptcy Court and the filings of the parties.

Appellants filed a petition for involuntary Chapter 7 bankruptcy against Appellee on October 5, 2014. Appellants – referred to as Petitioning Creditors in the Bankruptcy Court and in the parties' own appellate briefs – characterize themselves as “creditors” of Appellee who “believed and continue to believe in the legitimacy of their respective claims against Alleged Debtor [Appellee].” Appellants' Brief at 8. The claims are for compensation allegedly owed. On the other hand, Appellee characterizes Appellants as “disgruntled former employees or independent contractors who had previously worked for Funnel Science, and collectively they allege debts totaling a mere \$24,731.72.” Appellee's Brief at 6 (footnote omitted). Appellee recites the background of each individual Appellant and the alleged circumstances leading to his or her discharge or termination, and the relatively small sums that each then demanded from Appellee. *See generally id.* at 7-13. Appellee contends it disputed the amounts demanded, in full or in part, over a period of time until Appellants filed the petition for involuntary bankruptcy; Appellants argue that no bona fide disputes existed.

On October 27, 2014, Appellee filed its Motion to Dismiss Chapter 7 Case in the

Bankruptcy Court (USBC Doc. No. 4).³ A hearing was set, but then continued on Appellee's motion, prompting Appellants to move for the appointment of a trustee. Appellants had also served a subpoena duces tecum, which Appellee had moved to quash. The Bankruptcy Court set the hearing on all three motions on November 10, 2014, and after a partial hearing, continued it to November 14, 2014. At the November 14, 2014, hearing, the Chief Bankruptcy Judge orally granted Appellee's Motion to Dismiss and issued an Order Dismissing Involuntary Bankruptcy on November 17, 2014 (USBC Doc. No. 21) (and terminated the remaining motions).

On November 26, 2014, Appellee filed a Motion to Partially Reconsider Order Dismissing Bankruptcy Case, pursuant to Fed. R. Civ. P. 59 or, alternatively 60(b)(6),⁴ arguing that the Bankruptcy Court should have found that Appellants/Petitioning Creditors had filed the petition for involuntary bankruptcy in bad faith. The Bankruptcy Court set a hearing on December 16, 2014. On December 1, 2014, Appellee also filed an Application for Judgment Awarding Fees and Costs Under Section 303(i)(1), seeking \$29,127.50 in attorneys' fees and \$200.33 in expenses incurred while pursuing its Motion to Dismiss and otherwise defending against Appellants' petition. The Bankruptcy Court set a hearing on January 6, 2015.

At the December 16, 2014, hearing, the Chief Bankruptcy Judge orally denied the Motion for Partial Reconsideration and issued an Order Denying Motion for Reconsideration on January 6, 2015. At the January 6, 2015, hearing, the Chief Bankruptcy Judge granted fees on the Motion for Judgment Awarding Fees and Costs, but reduced the amount of attorneys' fees allowed. On January 8, 2015, the Bankruptcy Court issued a Final Judgment disposing of all

³ For the purposes of this Background, the Court will only cite to the Bankruptcy record if there is a reason to do so or the record cited is significant.

⁴ As made applicable by Fed. R. Bankr. P. Rules 9023 and 9024.

claims in Appellee Funnel Science's favor and apportioning the award of fees among three of the Appellants: \$1,200.00 from Ginny Rivers; \$5,000.00 from Ronald A. Pyke; and \$13,800.00 from Jessica Juderman-Van Brunt d/b/a Drop Visionary Branding, for a total award of \$20,000.00.

Appellants filed a Motion for Reconsideration Regarding Final Judgment Awarding Fees and Expenses to Alleged Debtor (USBC Doc. No. 36, the "First Motion for Reconsideration"), citing Fed. R. Civ. P. 59 and 60, raising for the first time their argument that Appellee was not authorized to do business in the State of Texas. Pursuant to Tex. Bus. Org. Code § 9.051(b), Appellants argued, Appellee should not have been granted the "affirmative relief" of attorneys' fees awarded for defending against the petition for involuntary bankruptcy. On March 4, 2015, the Chief Bankruptcy Judge issued a Memorandum Opinion and Orders (USBC Doc. No. 47) denying Appellants' First Motion for Reconsideration.

Appellants then filed a Comment Regarding the Court's Memorandum Opinion and Orders on March 10, 2015. The "comment" purported to "clarify a couple of matters in case they may affect the Court's ruling in its Order on Reconsideration." *See* USBC Doc. No. 53 at 2. They asserted that they could not have discovered Appellee's lack of authorization to conduct business in the State of Texas any earlier due to the "blatant perjury" of Appellee's owner. *See* USBC Doc. No. 53 at 3. In support, Appellants quoted two lines of deposition testimony that had been selectively lifted from a longer examination. *See id.* at 2. The following day, March 11, 2015, Appellants filed their Second Motion for Reconsideration (USBC Doc. No. 54), which was substantively a copy of the "Comment" made into the form of a motion, including the claim of "blatant perjury." On April 9, 2015, the Chief Bankruptcy Judge issued a Memorandum Opinion and Orders (USBC Doc. No. 57) on Appellants' "Comment" and the Second Motion for

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