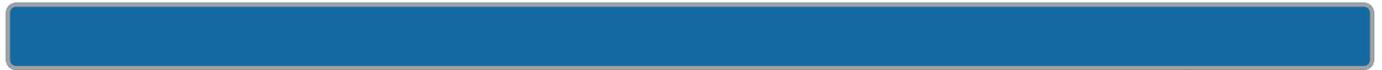




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Thursday, February 24, 2000

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
In re

WILLIAM TIMMEL,

No. 98-13709

[Debtor](#) ⓘ(s).

_____ /

DENT WIZARD INTERNATIONAL CORP., et al.,

[Plaintiff](#) ⓘ(s),

v.

A.P. No. 99-1118

WILLIAM TIMMEL,

[Defendant](#) ⓘ(s).

_____ /

Memorandum of Decision

[Chapter 7](#) debtor and defendant William Timmel has had a learning disability all of his life. His mother, Carole Timmel, has always helped him with money and other assistance. In the past, she has started a business so that Timmel would have a place to work. Timmel is very able at manual labor, but his disability makes it very difficult for him to handle paperwork and bookkeeping. From 1991 to 1995, Timmel was employed by plaintiff Dent Wizard of San Francisco, Inc., as an auto body repair man. In 1995, he left Dent Wizard and tried to open his own dent repair business. He quickly got into trouble, as he was unable to manage the finances and the paperwork. As she had in the past, Carole Timmel stepped in to help her son. In early 1996, with her son's consent, she put all the business affairs in her name and put \$10,000.00 of her own money into the business bank account. Under an informal agreement, she became the "owner" of the business, with Timmel being an "independent contractor." Timmel went about repairing dents; his mother handled all of the business matters, paid him more or less like an employee, and paid all the business debts as well as many of Timmel's personal debts. In October, 1997, Dent Wizard commenced an arbitration proceeding against Timmel, alleging that Timmel had violated independent contractor and secrecy agreements he had signed while he was an employee. On October 1, 1998, while the arbitration action was pending, Timmel filed his Chapter 7 [bankruptcy petition](#). He and Dent Wizard then stipulated to modify the [automatic stay](#) to allow the arbitration to proceed. They also agreed to extend the time for filing a dischargeability action. The time for objections to [discharge](#) was not extended, and Timmel received his discharge on January 6, 1999. Evidently, things did not go as well for Dent Wizard as it had anticipated. The arbitrator ruled that Timmel had breached the contracts, but rejected Dent Wizard's claims that Timmel's conduct was willful or malicious. Thus, its claims against Timmel were dischargeable. The court granted summary judgment to Timmel on the dischargeability [claim](#), based on the findings of the arbitrator. Instead of dropping the matter, Dent Wizard decided to prosecute a claim for revocation of Timmel's discharge, based on his arrangement with his mother. Its ambiguous argument was either that the 1996 arrangement between Timmel and his mother was a concealed fraudulent transfer or that there never was a transfer so that Timmel falsely failed to disclose the business assets in his [schedules](#). Both positions are nonsense. In the words of a witness called by Dent Wizard, any ambiguity was the result of "simple confusion and nothing more." The arrangement between Timmel and his mother was created in order to allow his mother to help Timmel make a living notwithstanding his disability, not defraud any creditors. All of the facts were clearly disclosed to the bankruptcy [trustee](#), who correctly saw that the estate had no interest in a business which was entirely the debtor fixing dented cars. The schedules were not false. Inconsistencies in the deposition testimony were the result of the informality of Timmel's arrangement with his mother, his disabilities, and simple misunderstanding. During the trial, Dent Wizard seemed to take the position that any ground for denial of a discharge was also ground for revocation of discharge. This is not correct. There are only three grounds for revocation of a discharge: that it was procured by fraud (§ 727(d)(1) of the [Bankruptcy Code](#)), that the debtor acquired property of the estate and failed to report it (§ 727(d)(2)), or that the debtor refused to obey an order of the court (§ 727(d)(3)). As to each ground, the plaintiff has the burden of proving actual, intentional fraud in fact. 6 Collier on Bankruptcy (15th Ed. Rev.), ¶ ¶ 727.15[3], 727.15[4]. Dent Wizard produced no such proof. Neither Timmel nor his mother ever had any intent to defraud anyone. There is no justification whatsoever for the revocation of Timmel's discharge. For the foregoing reasons, plaintiffs shall take nothing by their claim to revoke Timmel's discharge. Such claim

will be dismissed, with prejudice. Timmel shall recover his costs of suit. If any issues related to the effect of the injunction issued by the arbitrator remain, they shall be decided separately but judgment dismissing the revocation of discharge claim shall not be delayed. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for Timmel shall submit an appropriate form of judgment forthwith.

Dated: February 24, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

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