

In the United States Bankruptcy Court

for the Northern District of Iowa

LARRY GENE BRENNEMAN
Debtor.

Bankruptcy No. 93-11514KC
Chapter 7

ORDER RE MOTION FOR SUMMARY JUDGMENT

This matter came on for hearing before the undersigned on December 6, 1996 on Motion for Summary Judgment. Dennis Currell appeared for Debtor Larry Brenneman. Theresa Keninger appeared for CSC Credit Services. After the presentation of arguments by counsel, the Court took the matter under advisement.

STATEMENT OF THE CASE

Debtor Larry Brenneman filed a Motion for Order of Contempt against CSC Credit Services ("CSC"). He alleges that CSC violated 524(a)(2) by reporting discharged debts as bad debts, and by refusing to correct the credit report upon request by Debtor. Debtor also claims CSC has violated 362(a)(6) and 727. CSC moves for summary judgment and Debtor resists.

FINDINGS OF FACTS

Debtor filed a Chapter 7 petition on September 10, 1993. This Court granted Debtor a discharge pursuant to 524 on December 14, 1993 and the case was closed January 13, 1994.

CSC generated a credit report regarding Debtor in June, 1995. Based on this report, certain lending institutions allegedly denied loans Debtor sought to use to repair his roof. The report notes that Debtor received a discharge in a Chapter 7 bankruptcy. It further lists debts which were discharged in Debtor's 1993 Chapter 7 case as bad debts. CSC's report also shows a bad check item which Debtor asserts is not attributable to him.

After Debtor became aware that discharged debts remained listed on his credit report and that the report inaccurately listed a bad check, he visited CSC's office to discuss these inaccuracies. Debtor alleges that a CSC employee suggested he pay off the debts to remedy the credit report. He asserts that this constitutes an attempt to collect the debts.

Debtor then contacted Attorney Currell who notified CSC by letter sent September 13, 1995 that the credit report incorrectly contained information on discharged debts. Mr. Currell also made phone calls to CSC. CSC requested copies of Debtor's schedules from the bankruptcy case. Debtor provided these copies in July, 1996. CSC corrected the credit report by September 30, 1996.

Debtor alleges that as a result of the discharged debts being listed bad debts on the credit report and the incorrect bad check item, he has been denied credit in violation of 11 U.S.C. 524, 362(a)(6) and 727. Debtor also alleges that he has incurred attorney fees and costs, for which CSC should compensate him. Additionally, Debtor seeks a court order enjoining CSC from any further reports listing discharged debts as being anything other than discharged in bankruptcy.

In support of summary judgment, CSC asserts that, as a noncreditor, it has not attempted to collect any debt and therefore has not violated the discharge order. It also asserts that, as a credit reporting agency, it is governed by the Fair Credit Reporting Act which is outside this Court's jurisdiction. CSC argues that the entire matter could have been avoided if Debtor had provided it a copy of the Schedule of Creditors from his 1993 bankruptcy case when originally

requested.

Debtor asserts that issues of fact regarding whether CSC violated 524(a)(2) preclude summary judgment. He argues that CSC is subject to the discharge order as an agent of creditors. Debtor asserts that the Court retains jurisdiction to enforce its discharge order.

CONCLUSIONS OF LAW

CSC argues that this Court does not have jurisdiction to hear this dispute, which it characterizes as governed by the Fair Credit Reporting Act ("FCRA"). Jurisdiction to enforce a violation of the FCRA is given to "any appropriate United States District Court" or "any other court of competent jurisdiction" under 15 U.S.C. 1681(p). A "court of competent jurisdiction" has been held to include a state court. Ruth v. Westinghouse Credit Co., 373 F. Supp. 468 (W.D. Okla. 1974). Bankruptcy courts are not mentioned in 1681(p). A bankruptcy court "possesses only the jurisdiction and powers expressly or by necessity granted by Congress." Johnson v. First Nat'l Bank, 719 F.2d 270, 273 (8th Cir. 1983), cert. denied 465 U.S. 1012 (1984).

If this dispute were solely governed by the FCRA, it is probable that this Court would lack jurisdiction. Because Debtor received the advantages of a discharge through his Chapter 7 case, however, Bankruptcy Court has the power to determine whether CSC's actions violated that discharge. Violations of the discharge order are core matters in a bankruptcy proceeding. In re Schatz, 122 B.R. 327 (N.D. Ill. 1990). The court which issued the discharge has jurisdiction to determine the scope of the discharge under 524. In re Jacobs, 149 B.R. 983, 989 (Bankr. N.D. Okla. 1993). A bankruptcy court has jurisdiction to determine whether a discharge order has been violated. In re Thomas, 184 B.R. 237 (Bankr. M.D.N.C. 1995).

CSC seeks summary judgment on Debtor's Motion for Order of Contempt. Hesitancy in granting summary judgment is no longer appropriate in light of recent Supreme Court decisions. Midwest Radio Co. v. Forum Pub. Co., 942 F.2d 1294, 1296 (8th Cir. 1991). Although the Eighth Circuit views summary judgment as a drastic remedy which must be exercised with extreme care, the court has also recognized the principle that "the summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the federal rules as a whole which are designed to secure the just, speedy and inexpensive determination of every action." Wabun-Inini v. Sessions, 900 F.2d 1234, 1238 (8th Cir. 1990) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 2554-55 (1986)).

A party moving for summary judgment must show an absence of any genuine issue of material fact in order to succeed in its motion. In re Earhart, 68 B.R. 14, 15 (Bankr. N.D. Iowa 1986). In considering a motion for summary judgment, the Court must view the facts in the light most favorable to the party opposing the motion, giving that party the benefit of all reasonable inferences to be drawn from the facts. United States v. One 1989 Jeep Wagoneer, 976 F.2d 1172, 1176 (8th Cir. 1992). Where mental state or intent is at issue, summary judgment must be granted with caution, as usually such issues raise questions for determination by a factfinder. Id.

VIOLATION OF 362 AND 727

The automatic stay of 362 terminates after the bankruptcy case is dismissed or after a discharge is granted. Browning v. Navarro, 743 F.2d 1069, 1083 (5th Cir. 1984). A debtor's right to the automatic stay ceases to exist after a case has been closed. In re Olive St. Inv., Inc., 972 F.2d 214, 216 (8th Cir. 1992). The automatic stay terminates under 362(c)(2)(C) after discharge of a Chapter 7 debtor.

Section 727 allows the court to grant a discharge to a debtor who has filed for relief under Chapter 7. It also provides grounds for objections to discharge. It does not apply after a discharge has been granted to the debtor.

Debtor's Motion for Contempt alleges that CSC violated 362(a) and 727. The automatic stay of 362 ceased to exist when Debtor received his discharge and the case was closed. Discharge was entered December 14, 1993; the case was closed January 13, 1994. The conduct of CSC of which Debtor complains in this matter occurred in 1995, long after the discharge and closing of the case. Accordingly, CSC has not violated 362, regardless of the existence of any disputed

facts. Neither has CSC committed a violation of 727. To the extent Debtor's Motion for Order for Contempt asserts claims for violations of 362(a) and 727, CSC's Motion for Summary Judgment must be sustained.

VIOLATION OF 524

A bankruptcy court has authority to issue civil contempt orders. In re Walters, 868 F.2d 665, 669 (4th Cir. 1989); see In re Carter, 691 F.2d 390, 391 (8th Cir. 1982) (finding that the bankruptcy court's issuance of a contempt citation was "within its jurisdiction"). In this jurisdiction, "it well settled that a willful violation of 524 may constitute contempt." In re Olson, 38 B.R. 515, 518 (Bankr. N.D. Iowa 1984) (citing In re Myers, 18 B.R. 362 (Bankr. E.D. Va. 1982)); see also In re Kampen Farms, Inc., No. X87-01347XF, slip op. at 9 (Bankr. N.D. Iowa Dec. 19, 1996). Willfulness in contempt cases means a deliberate or intended violation, as distinguished from an accidental, inadvertent, or negligent violation of any order. Kampen Farms, slip op. at 9; Hubbard v. Fleet Mortgage Co., 810 F.2d 778, 781 (8th Cir. 1987).

In a proceeding to enforce a discharge injunction, the debtor has the burden of proving that the discharge applies to the debt in question and that a violation of the discharge occurred. In re Costa, 172 B.R. 954, 960 (Bankr. E.D. Cal. 1994). The debtor must show by a preponderance of the evidence entitlement to injunctive relief. Jacobs, 149 B.R. at 990.

Section 524(a)(2) provides that a discharge operates as an injunction against the "continuation of an action, employment of a process, or an act to recover, to collect or offset any such debt as the personal liability of the debtor." A discharge does not operate as payment or extinguishment of the debt. In re Harris, 85 B.R. 858, 863 (Bankr. D. Colo. 1988). Instead, a discharge prohibits future acts to enforce the debt against the debtor. Id.

The function of a discharge is to enjoin creditors. 2 Colliers Bankruptcy Practice Guide 39.03(12) (1996). The Discharge Order entered by the Court states that "all creditors" are enjoined from "engaging in any act to collect [discharged] debts as personal liabilities" of Debtor. This order complies with the Official Form pursuant to Bankruptcy Rule 4004(e). Id.

Discharge establishes a legal right not to pay a debt and safeguards against harassment by the creditor. In re Walker, 180 B.R. 834, 840 (Bankr. W.D. La. 1995). The discharge injunction of 524(a)(2) is "intentionally broad" and intended to preclude all actions by a creditor to collect from a debtor. Id. at 842. All formal and informal actions by a creditor are barred. Id.

A threat to enforce a surviving lien can violate the injunction if the threat is truly an effort to coerce payment. Id. at 843. A creditor's act of placing a notation on a debtor's credit report can be a violation. In re Sommersdorf, 139 B.R. 700, 702 (Bankr. S.D. Ohio 1991) (finding violation of 1301 in language similar to 524(a)(2)). In Olson, this Court considered whether a creditor's refusal to provide medical services constituted a violation of 524(a)(2). 38 B.R. at 518. It held that by using the refusal as a lever, the creditor was attempting to collect a debt in violation of the discharge injunction. Id.

Debtor alleges that CSC violated the discharge injunction of 524(a)(2) by reporting debts that were discharged in bankruptcy as bad debts on Debtor's credit report, and by not correcting the credit report after his request. He asserts that CSC's employee's statement to him that he should pay his debts to remedy his negative credit report constitutes an attempt to collect discharged debts. Debtor states that disputed facts preclude summary judgment.

The only "fact" arguably in dispute relates to the comment allegedly made by a CSC employee. Accepting Debtor's version of the facts as true, the Court concludes that no violation of the discharge injunction occurred. CSC is not a creditor and did not have a claim against Debtor, discharged or otherwise. No showing has been made that CSC reported information on Debtor's credit report in order to compel payment. No showing has been made that the credit report was being used as a lever to collect a debt. The record contains no evidence that CSC was acting as an agent of any of the creditors whose discharged debts were listed on the credit report.

Debtor's reliance on CSC's employee's suggestion that he remedy his credit report by paying the debts is unavailing. Viewing the facts in the light most favorable to Debtor, this statement is insufficient to constitute a willful violation of the discharge injunction of 524(a)(2). CSC's affidavit states that it is not involved in debt collection. It is not bound by a staff employee's casual suggestion, made without any further showing of an intent by CSC to compel payment. The

Court concludes that no genuine issues of fact exist. CSC is entitled to summary judgment on Debtor's Motion for Order of Contempt as a matter of law.

WHEREFORE, CSC Credit Services' Motion for Summary Judgment is GRANTED.

FURTHER, based on undisputed facts, the Court concludes that CSC is entitled to judgment as a matter of law on Debtor's Motion for Order of Contempt.

FURTHER, Debtor's Motion for Order of Contempt is DISMISSED.

SO ORDERED this 6th day of January, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge