In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

HAROLD LeROY DeYOUNG and JANICE A. DeYOUNG	Bankruptcy No. 98-03796S
Debtor(s).	Chapter 7
HAROLD DeYOUNG	Adversary No. 00-9063S
Plaintiff(s)	
vs.	
JAMES LORING and TRACY MALM	
Defendant(s)	

MEMORANDUM OF DECISION AND ORDER DISMISSING ACTION

On April 7, 2000, debtor-plaintiff Harold DeYoung filed a complaint requesting the court to enjoin creditor-defendants James Loring and Tracy Malm from continuing personal injury actions against him in the Iowa District Court for Clay County. Loring and Malm filed a joint answer admitting all material allegations of the complaint. As "affirmative responses," Loring and Malm stated they first learned of the bankruptcy case on or about October 12, 1999. They requested the court to set a deadline for them to file an action to determine the dischargeability of their claims against the debtor.

A telephonic scheduling conference was held May 26, 2000. The parties agreed that the matter could be submitted to the court without trial on a joint stipulation of undisputed facts. The stipulation was filed July 14, 2000. The parties have filed briefs. Oral argument was heard August 8, 2000 in Sioux City. Appearing were John D. Mayne for DeYoung and James A. Clarity, III, for defendants Loring and Malm. The court now considers the matter fully submitted and issues its findings and conclusions as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C.§ 157(b)(2)(I) and (O).

Findings of Fact

The court recites here relevant facts from the admitted allegations of the complaint and the parties' stipulation of undisputed facts. DeYoung filed a Chapter 7 bankruptcy petition on December 24, 1998. Loring and Malm were not listed on the initial bankruptcy schedules. The case was a "no-asset" case. On March 31, 1999, DeYoung received a discharge. The case closed July 8, 1999.

The parties have stipulated that "neither Malm nor Loring received notice of the filing of the within bankruptcy at any time prior to Debtor's discharge on July 8, 1999." Doc. 7, ¶ 10. The court takes this to mean either that Malm and Loring did not have notice of the bankruptcy filing before discharge

was granted, or that they did not have notice before the case was closed. The ambiguity does not affect the court's decision.

In October 1999, Loring and Malm received correspondence notifying them of DeYoung's bankruptcy case. On December 6, 1999, DeYoung reopened his case to add Loring and Malm to his schedule of unsecured creditors. On February 7, 2000, the case closed a second time.

In 1998, Loring and Malm filed separate petitions in the Iowa District Court for Clay County naming DeYoung and others as defendants. Loring, Malm and DeYoung were co-employees at Heartland Beef in Spencer, Iowa. The petitions alleged personal injuries arising from job-related incidents that occurred in 1996 and 1997. Loring and Malm both alleged claims for negligence and gross negligence. DeYoung filed a motion for summary judgment in each case, alleging that there was no genuine issue of fact as to his defense that the claims had been discharged in bankruptcy. Loring and Malm resisted, contending that the debts came with an exception to discharge under 11 U.S.C. § 523 (a).

DeYoung's co-defendants, Rohwer and Gesme, submitted motions for summary judgment as well. These motions were not included in the attachments to the stipulation of facts. Judging from the state court's ruling on the motions, the issue raised by Rohwer and Gesme was the level of culpability that must be alleged in order to maintain an action against a co-worker for injuries arising in the course of employment. On February 10 and 11, 2000, the Iowa District Court issued orders overruling all motions for summary judgment. Both actions have been placed on the trial calendar.

Discussion

In his complaint, DeYoung initially prayed the court to enjoin Loring and Malm from continuing their litigation in Clay County. His brief, however, states that the purpose of his action is to obtain a ruling that the claims of Loring and Malm are dischargeable as a matter of law. He asks the court to rule that a gross negligence claim permitted by Iowa Code § 85.20(2) does not meet the level of culpability required for the "willful and malicious injury" exception to discharge under 11 U.S.C. § 523(a)(6). The parties have stipulated that Loring and Malm would be able to generate jury issues in the Clay County lawsuits on "whether their injuries were caused by Debtor's 'gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another' within the meaning of Iowa Code § 85.20(2)." Doc. 7, ¶ 6. For the following reasons, the court concludes that DeYoung is not entitled to relief from this court and dismisses the complaint.

A bankruptcy discharge operates as an injunction against the collection of a discharged debt as a personal liability of the debtor. 11 U.S.C. § 524(a). A debtor need not request that the discharge injunction be imposed. The injunction arises automatically upon entry of the discharge. It is the equivalent of a specific court order prohibiting the collection of discharged debts. Violation of the injunction may be sanctioned as contempt. Atkins v. Martinez (In re Atkins), 176 B.R. 998, 1009 (Bankr. D. Minn. 1994).

A Chapter 7 discharge operates to discharge all pre-petition debts, except as provided in Bankruptcy Code § 523. 11 U.S.C.
§ 727(b). Before this court could find that collection efforts constitute a violation of the discharge injunction, it would have to determine whether the debt at issue was included in the debtor's discharge.

Loring and Malm contend that their claims are debts for willful and malicious injury. Such debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(6). In DeYoung's case, the deadline for filing a complaint under § 523(a)(6) was March 26, 1999. See 11 U.S.C. § 523(c)(1); Fed.R.Bankr.P. 4007(c). Loring and Malm did not file complaints by the deadline. However, they were omitted from the initial schedules of creditors. Bankruptcy Code § 523(a)(3)(B) provides that a Chapter 7 discharge does not discharge debt-

> neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit . . . if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.

11 U.S.C. § 523(a)(3)(B). A complaint to determine the dischargeability of debt pursuant to § 523(a)(3) may be filed at any time, and a case may be reopened for the purpose of filing such a complaint. Fed.R.Bankr.P. 4007(b). For this reason, it is unnecessary for the court to set a deadline for Loring and Malm to file a dischargeability complaint.

Reopening the case to add Loring and Malm to the schedule of creditors had no effect on the dischargeability of their claims. Beezley v. California Land Title Co. (In re Beezley), 994 F.2d 1433, 1437 (9th Cir. 1993) (O'Scannlain, J., concurring); In re Kirk, 206 B.R. 907, 909 (Bankr. E.D. Tenn. 1997); In re McKinnon, 165 B.R. 55, 56 & n.7 (Bankr. D. Me. 1994); see generally 3 Collier on Bankruptcy ¶ 350.03[2] (15th ed. rev. 2000). Dischargeability depends on whether the debts are of the type described in § 523(a)(3)(B) and whether the creditors had knowledge of the case in time to file timely complaints under § 523(a)(6). See Waugh v. Eldridge (In re Waugh), 172 B.R. 31, 34 (Bankr. E.D. Ark. 1994) (discussing three lines of cases re standards of proof under § 523(a)(3)(B)), reversed on other grounds, 198 B.R. 545, 548 (E.D. Ark. 1995) (affirming conclusion that creditor must prove merits of claim), aff'd, 95 F.3d 706 (8th Cir. 1996). Loring and Malm either will or will not be able to prove these elements. Listing the creditors on the schedules, in itself, had no effect on the outcome. In re Beezley, 994 F.2d at 1437.

The bankruptcy court and the state court have concurrent jurisdiction over dischargeability actions under § 523(a)(3). In re Kirk, 206 B.R. at 909; In re Iannacone, 21 B.R. 153, 155 (Bankr. D. Mass. 1982); Advisory Committee Note to Fed.R.Bankr.P. 4007 (1983); see generally 4 Collier ¶ 523.03.

DeYoung asks the bankruptcy court to decide a point of law that he believes will determine that the claims brought against him by Loring and Malm in the Iowa District Court are dischargeable. The creditors appear to agree that the bankruptcy court may decide this issue, and merely disagree that the ruling should be in DeYoung's favor. To the extent that the parties are asking the bankruptcy court to review judicial determinations already made in the state court, the bankruptcy court is prohibited from doing so. The bankruptcy court is precluded from setting aside issues that were necessarily determined between the parties in the state court and "lack[s] jurisdiction to engage in appellate review of state court determinations." Goetzman v. Agribank, FCB (In re Goetzman), 91 F.3d 1173, 1177 (8th Cir. 1996) (comparing claim and issue preclusion with Rooker-Feldman doctrine), cert. denied, 117 S.Ct. 612 (1996).

Even if the state court judge has not already decided the legal issue in question, the bankruptcy court declines to do so. There is no reason for the bankruptcy court to engage in piecemeal litigation on

issues within the jurisdiction of another court. DeYoung's no-asset case has been closed twice. No one but the parties has an interest in the outcome of this matter.

Resolution of the actions pending in Clay County District Court necessarily implicates § 523(a)(3), whether the parties have raised it as such or not. The state court has concurrent jurisdiction to decide the dischargeability question. It appears that the parties have already begun litigating relevant issues. Allowing the state court to decide all issues would be a more efficient use of judicial resources. The state court, unlike the bankruptcy court, can liquidate personal injury claims. See 28 U.S.C. §§ 157(b)(2)(B), 157(b)(5). If any party believes that the state court's decisions are incorrect, state appellate procedures are available to address such matters. Therefore, this court will dismiss the complaint to permit trials to go forward in the Iowa District Court.

IT IS ORDERED that the complaint is dismissed.

SO ORDERED THIS 18th DAY OF OCTOBER 2000.

William L. Edmonds
U.S. Bankruptcy Judge