

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF  
IOWA

IN RE: )

) Chapter 7

ROBERT L. GRAVES )

DIANE GRAVES )

) Bankruptcy No. 02-04233-D

Debtors. )

**ORDER RE: MOTION FOR SANCTIONS FOR VIOLATION OF § 524(a)  
INJUNCTION**

This matter came before the undersigned on May 22, 2003 on Motion for Sanctions filed by Debtors. Debtors were represented by attorney Stuart Hoover. Creditor Capital One Services, Inc. did not appear. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O).

**FINDINGS OF FACT**

Debtors filed their Chapter 7 petition on November 27, 2002. Discharge entered in Debtors' case on February 27, 2003.

Capital One is scheduled as an unsecured creditor in Debtor's case. Between January 22, 2003 and February 21, 2003, Capital One contacted Debtors, attempting to collect on the debt. The contacts included at least 10 phone calls. Debtors also received a letter from Capital One dated March 20, 2003.

Debtors filed their Motion for Sanctions on January 29, 2003. They assert Capital One violated the 11 U.S.C. § 524(a) discharge injunction. They request the imposition of sanctions against Capital One, including actual damages, punitive damages, attorney fees and costs.

**CONCLUSIONS OF LAW**

Section 524(a) states, in pertinent part:

(a) A discharge in a case under this title--

. . .

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.

11 U.S.C. § 524(a).

Section 524(a)(2) replaces the automatic stay of § 362 with a permanent injunction against enforcement of all discharged debts upon entry of the discharge. In re Waswick, 212 B.R. 350, 352 (Bankr. D.N.D. 1997). Unlike § 362(h), which authorizes an individual injured by a willful violation of the automatic stay to recover actual damages, attorney fees, and where appropriate, punitive damages, § 524(a) does not expressly mention such awards. In re Walker, 180 B.R. 834, 847 (Bankr. W.D. La. 1995). Willful violation of the § 524(a)(2) injunction, however, will warrant a finding of civil contempt. Id.; Waswick, 212 B.R. at 352. The burden rests with the movant to show by clear and convincing evidence that the offending creditor had knowledge of the discharge and willfully violated it by pursuing collection activities. Waswick, 212 B.R. at 352.

#### **ANALYSIS**

Discharge entered on February 27, 2003. Most of Capital One's collection activities occurred between January 22 and February 21, 2003, prior to the entry of the discharge. Therefore, Debtors cannot prove that Capital One had knowledge of a discharge and willfully violated it. Capital One's letter dated March 20, 2003 opens as follows: "As you requested, your account will close when your balance reaches zero." Standing alone, this contact with Debtors is insufficient for a finding of willful violation of the discharge injunction.

The Court is unwilling to utilize its contempt power to impose sanctions against Capital One for pre-discharge collection activities. Debtors' Motion requests sanctions based on § 524(a)(2) which concerns only post-discharge actions by creditors. This motion fails to give Capital One notice of remedies Debtors may wish to seek for any violations of the automatic stay, pre-discharge, under § 362(h).

**WHEREFORE**, Debtors' Motion for Sanctions for Violation of § 524(a) Injunction is DENIED.

**FURTHER**, this ruling does not preclude Debtors from re-examining the matter as a violation of the automatic stay under § 362(h).

**SO ORDERED** this 30th day of May, 2003.

PAUL J. KILBURG  
CHIEF BANKRUPTCY JUDGE