United States Bankruptcy Court
Western District of Wisconsin

Cite as: [Unpublished]

In re James F. Dienberg and Patricia A. Dienberg, Debtors
Bankruptcy Case No. 95-51608-7

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

November 8, 1995

Gary D. Knudson, for the debtors.
Edward P. Rudolph, for Shirley A. Smedema.
Eric S. Darling, for Milwaukee Guardian.

Thomas S. Utschig, United States Bankruptcy Judge.

MEMORANDUM OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Presently before the Court are two motions filed by Shirley A. Smedema, a creditor of the debtors. Specifically, Ms. Smedema has filed a motion for relief from the automatic stay, and has also recently filed a motion which is styled as one seeking the "temporary revocation of the discharge of debtors order dated August 31, 1995." The relief sought by Ms. Smedema has been opposed by the debtors, and to a certain extent, Milwaukee Guardian Insurance Company, the insurance company which had been defending the debtors in certain litigation presently pending between the parties in state court. Ms. Smedema is represented by Edward P. Rudolph, the debtors are represented by Gary D. Knudson, and Milwaukee Guardian is represented by Eric S. Darling.

In sum, the operative facts are as follows. On August 18, 1991, the car driven by debtor Patricia Dienberg collided with the car in which Ms. Smedema was a passenger. Ms. Smedema's husband was killed in the accident; Ms. Smedema herself suffered significant injuries. The debtors' daughter-in-law, who was a passenger in the debtors' car, was also injured. Ms. Smedema subsequently filed suit against the Dienbergs in state court, and Milwaukee Guardian defended the suit. Immediately prior to the scheduled trial, the parties reached at least a partial settlement. The insurance company paid $35,000.00 to the debtors' daughter-in-law and her husband, while the remaining balance of the $200,000.00 policy, or $165,000.00, was available for Ms. Smedema. The parties also agreed that Ms. Dienberg was the sole cause of the accident, and that Ms. Smedema's total damages amounted to $750,000.00.

However, the parties thereafter experienced difficulty in resolving the details of the settlement. As a result, Ms. Smedema sought the entry of a judgment against the debtors. Her request for a judgment was resisted by the debtors and Milwaukee

Guardian. Specifically, the debtors objected to the entry of a judgment against Mr. Dienberg, who was not driving the vehicle that struck Ms. Smedema and did not in any manner cause the accident to occur. They also objected to Ms. Smedema's claim that the judgment should include pre-judgment interest and double costs because of an offer of settlement which Ms. Smedema had served upon the debtors and the insurance company. Under the statutes relating to such offers, it appears that if the offering party thereafter receives more than the offer, that party is entitled to interest and double costs. See Wis. Stat. 807.01(3) and (4). Just prior to the May 18, 1995 hearing on these issues, the debtors filed bankruptcy.

Ms. Smedema seeks to have the automatic stay lifted so that she may proceed with the state court litigation. In essence, she wants to obtain a judgment against the debtors so that she can receive interest and costs, including attorneys' fees. Apparently, she believes that she can get these amounts from the insurance company, even though the insurance company has now paid the policy limits. She also wants the debtors to assign her the "bad faith" claim they allegedly possess against Milwaukee Guardian. She suggests that if these issues were resolved, she would agree not to pursue the debtors on the judgment, and that resolution of these issues might mean the debtors need not have filed bankruptcy.

However, on August 31, 1995, the debtors received their discharge in bankruptcy. The debtors and the insurance company submit that Ms. Smedema's motion is now moot, as the discharge not only terminates the automatic stay, but also precludes the entry of the judgment she seeks. See 11 U.S.C. §§ 362(c)(2)(C); 524(a)(2). As a result of this argument, Ms. Smedema filed her motion for the "temporary" revocation of the debtors' discharge to permit her to obtain her judgment. Her attorney indicates that he "erroneously" believed that the motion for relief from the stay essentially constituted an objection to the debtors' discharge, and that he did not realize he needed to object to the discharge to prevent its issuance. Ms. Smedema appeals to the Court's conscience, suggesting that it should not penalize an "innocent widow" for failure to comply with a technicality.

Unfortunately, the Court does not possess the discretion Ms. Smedema and her attorney suggest that it has. Under Fed. R. Bankr. P. 4007(c), an objection to discharge for those debts specified in 11 U.S.C. § 523(c) must be filed within 60 days of the meeting of creditors. Similarly, under Rule 4004(a), objections to discharge under § 727 must be brought within the same time period. Once the 60 day period has expired, the court shall "forthwith" grant the debtors their discharge. Fed. R. Bankr. P. 4004(c). The court may enlarge the time for filing complaints under the rules governing objections to discharge and dischargeability only to the extent and under the conditions stated in those rules. In re Sheehan, 153 B.R. 384, 386 (Bankr. D.R.I. 1993); In re Barley, 130 B.R. 66, 69 (Bankr. N.D. Ind. 1991); see also Fed. R. Bankr. P. 9006(b)(3) ("The court may enlarge the time for taking action under Rules . . . 4004(a), 4007(c) . . . only to the extent and under the conditions stated in those rules.").

The case law clearly precludes extending or overlooking a creditor's failure to file an objection to discharge within the required time period, unless a motion for extension of time is made before the original time period expires. See In re Isaacman, 26 F.3d 629 (6th Cir. 1994); In re Themy, 6 F.3d 688 (10th Cir. 1993); In re Anwiler, 958 F.2d 925 (9th Cir. 1992). As numerous courts have recognized, the court has no discretion to grant a request for an extension of time if the request is made after the deadline for objecting has passed, as the untimeliness of the request is fatal. In re Gordon, 142 B.R. 521, 523-24 (Bankr. S.D. Fla. 1992); In re White, 133 B.R. 206, 208 (Bankr. S.D. Ohio 1990); Matter of Ksenzowski, 56 B.R. 819, 829-30

(Bankr. E.D.N.Y. 1985). As this Court stated in In re Juzwiak, 78 B.R. 215, 217 (Bankr. W.D. Wis. 1987), when considering Rule 4007,

> Generally, "[t]he time limitations of Rule 4007 and the procedure for extending them are set in stone." In re Shelton, 58 B.R. 746, 749 (Bankr. N.D. Ill. 1986). The rule unequivocally states that motions to extend the time for filing complaints objecting to dischargeability "shall be made before the time has expired." Bankruptcy Rule 4007(c). The court is prohibited from otherwise extending this deadline.

There is a limited exception to this rule which permits a court to fashion some relief under 11 U.S.C. § 105 where the court's error is the reason for the creditor's failure to file a timely objection. See Isaacman, 26 F.3d at 632; Themy, 6 F.3d at 689-90; Anwiler, 958 F.2d at 928-29. Here, however, the error is solely that of the creditor, and the Court is unable to overlook the failure to file a timely objection to discharge. Themy, 6 F.3d at 689; Juzwiak, 78 B.R. at 217. Further, it should be noted that the only grounds for objecting to a debtor's discharge are contained in 11 U.S.C. §§ 523(a) and 727(a), and Ms. Smedema has not indicated what basis she would have for objecting to the debtors' discharge under these sections. Her position appears to simply be that she does not want the discharge issued, but in the absence of an objection the debtors were entitled to their discharge despite her perceptions of its fairness. See Rule 4004(c); In re Nelkin, 150 B.R. 65, 67-68 (Bankr. D. Kan. 1993) (if the debtors have complied with all the provisions of the code, bankruptcy court may not exercise its equitable powers to deny their motion for immediate discharge); In re Thornton, 73 B.R. 178, 179 (Bankr. N.D. Ohio 1986) (in absence of complaint objecting to discharge, waiver by debtor, or motion of debtor to defer issuance of discharge, no basis exists to deny chapter 7 debtor's discharge).

Given the foregoing, the Court cannot even reach the merits of Ms. Smedema's arguments concerning relief from the stay. Upon discharge, the automatic stay is terminated as to actions against the debtor. 11 U.S.C. § 362(c)(2). Ms. Smedema complains that she is now unable to obtain a judgment against the debtors because of the effect of the issuance of a discharge under § 524(a)(2). This is true to the extent that such a judgment would in any manner impact or affect the debtors personally, as that section "operates as an injunction against the commencement or continuation of an action . . . to collect, recover, or offset any such debt as a personal liability of the debtor." See 11 U.S.C. § 524(a)(2). Nonetheless, she suggests that the Court could "revoke" the debtors' discharge so that she could obtain her judgment. There are two reasons why this Court may not revoke the discharge. First, the debtors were entitled to the discharge when it was issued on August 31, 1995. Accordingly, under the authorities reviewed above there is really no basis for this Court to exercise its equitable power to interfere with the debtors' right to receive their discharge. The broad equitable powers the bankruptcy courts possess under 11 U.S.C. § 105 may not be exercised "in a manner that is inconsistent with the other, more specific provisions of the Code." Nelkin, 150 B.R. at 67 (quoting In re Frieouf, 938 F.2d 1099, 1103 n.4 (10th Cir. 1991)). As the court stated in Nelkin:

> This Court finds that it would be inappropriate for the Court to exercise its equitable power under § 105(a) in light of the definite provisions set out in § 727 and Rule 4004 of the Federal Rules of Bankruptcy Procedure. . . . The general policy underlying Rule 4004(a) "is to make finite the creditor's opportunity to object to the debtor's discharge so as to allow the bankruptcy court to enter the Chapter 7 discharge `forthwith,' thereby fulfilling Congress' intent to provide the debtor with finality and certainty in relief from financial

> distress." [citation omitted]. . . . Rule 4004(c) provides a warning to creditors that they must be diligent in examining their available legal options and that they must meet the exceptions outlined in the Rule to prevent the Court from granting the debtors' discharge forthwith.

150 B.R. at 67-68.

The second reason the Court may not grant Ms. Smedema the relief she requests is that the bankruptcy code does not grant this Court discretion in revoking a debtor's discharge. A discharge, once issued, may only be revoked upon a showing of fraud. 11 U.S.C. § 727(d); see also In re Brassard, 162 B.R. 375 (Bankr. D. Me. 1994). While there is some authority for a slim exception where the discharge was issued by mistake, these cases are appropriately limited to those situations in which the court acts to correct its own error. See In re Cisneros, 994 F.2d 1462 (9th Cir. 1993); In re Ford, 159 B.R. 590 (Bankr. D. Ore. 1993). In this case, the Court did not make an error. The debtors were entitled to the discharge, and Ms. Smedema has presented no basis for revocation of that discharge.

Accordingly, Ms. Smedema's motion for relief from the stay, together with her motion to temporarily revoke the debtors' discharge, are denied.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.