



In re:

**Andrea K. Shader,
Debtor.**

**Chapter 7 Case
10-10480**

ORDER

**DENYING DEBTOR'S MOTION TO CONTINUE, DENYING CREDITORS' MOTION FOR
SANCTIONS, GRANTING WITH PREJUDICE THE DEBTOR'S MOTION TO DISMISS,
AND DIRECTING CLERK TO CLOSE CHAPTER 7 CASE**

On January 27, 2014, the Debtor moved *pro se* to reopen her Chapter 7 case, seeking to recover damages for alleged violations of both the automatic stay and discharge injunction by River Valley Credit Union ("RVCU") and Brattleboro Savings & Loan ("BSL"), (collectively, the "Creditors") (doc. # 77). The Court granted the motion to reopen on March 26, 2014, and set an evidentiary hearing on the matter for July 1 and 2, 2014 (doc. ## 97, 108). The day before trial, the Debtor filed an amended notice of evidentiary hearing, identifying an additional witness, Gladys J. Frankel, Ph.D. (doc. # 127). The Creditors filed a response to the notice, stating they did not stipulate to the inclusion of Ms. Frankel as a witness (doc. # 128). Thereafter, the Creditors filed a motion under Bankruptcy Rule 7037, asking the Court to exclude Ms. Frankel's testimony, as the Debtor had failed to comply with discovery deadlines, by not having provided them with any responses to their expert interrogatories or requests to produce as of the filing of their motion (doc. # 129) (the "Creditors' Motion"). Also on June 30, 2014, the Creditors filed an objection to the Debtor's not-yet docketed motion to continue the July 1 and 2 evidentiary hearing, arguing that the Debtor had had ample opportunity to schedule the expert's availability, and noting that RVCU and BSL employees had adjusted their own schedules to accommodate the trial dates (doc. # 130) (the "Objection"). Finally, on the morning of trial, the Debtor filed¹ a motion to continue the hearing, asserting that she had just learned on June 30, 2014, that her expert witness Dr. Frankel was not available on the trial dates (doc. # 131) (the "Debtor's Motion").

The Court held an evidentiary hearing on the stay violation allegations, as scheduled, on July 1, 2014, at which the Debtor appeared *pro se* and David Dunn, Esq., appeared on behalf of both RVCU and

¹Vt. LBR 5005-2(c) provides that documents submitted by email or fax are deemed filed as of the time the Clerk's Office enters it on the docket.

BSL. Prior to proceeding with that hearing, the Court addressed the Debtor's and Creditors' Motions.

The Debtor and Creditors each reiterated their positions with respect to both Motions. Creditor BSL had numerous witnesses in the courtroom ready to testify, based upon the Debtor's initial notice of evidentiary hearing, and BSL counsel averred in its Objection that some of these witnesses had changed vacation plans to be present at the hearing. After considering the arguments each party articulated in the papers and at the hearing, as well as the procedural history in this case with respect to the setting of deadlines for the disclosure of experts and sharing of expert reports, the Court determined that (1) the Debtor had had ample opportunity - more than two months - to prepare and schedule the availability of her witnesses, (2) the Creditors and witnesses were ready to proceed, and (3) the Debtor's failure to raise this issue until the eve of trial all weighed against the granting of relief. Therefore, the Court found that the Debtor had failed to establish cause for a continuance and denied the Debtor's Motion.

The Debtor then orally moved to dismiss her case (the "Motion to Dismiss"). The Creditors responded that they had no objection to the Motion to Dismiss, provided that it was with prejudice. The Court then inquired whether the Debtor understood that the dismissal would be with prejudice, and that such a ruling would preclude her from pursuing her case in this or any other court. Further, the Court offered the Debtor an opportunity for a short recess to consider her options. The Debtor declined the opportunity, and affirmed her intention to dismiss her case. Therefore, the Court granted the Debtor's request, and denied the Creditors' Motion as moot. This Order is entered to memorialize the Court's oral ruling.

Based upon the foregoing, IT IS HEREBY ORDERED that

- 1) the Debtor's Motion to Continue Hearing is DENIED;
- 2) the Debtor's Motion to Dismiss this contested matter seeking damages against BSL and RVCU for an alleged violation of the automatic stay and the discharge injunction is GRANTED, with prejudice;
- 3) the Creditors' Motion for Sanctions is DENIED as moot; and
- 4) the Clerk is directed to promptly close this Chapter 7 case.

SO ORDERED.

July 1, 2014
Burlington, Vermont


Colleen A. Brown
United States Bankruptcy Judge