UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

NELSON STRYKER SPERLING and **Chapter 7**
SUSAN THERESA SPERLING **# 95-10229 cab**
Debtors.

Appearances: *Jess T. Schwidde, Esq.*
Glinka & Schwidde
Rutland, VT
Attorney for Movant

MEMORANDUM OF DECISION
DENYING MOTION TO RENEW ORDER GRANTING JOINT STIPULATION OF NON-DISCHARGEABILITY OF DEBT

On November 7, 2001, Ellen Marlynne Pike (hereinafter "the movant") filed a Motion to Renew Order Granting Joint Stipulation of Non-dischargeability of Debt [Dkt. #34-1] (hereafter "Motion to Renew Order"). The movant requests that this Court "renew" an "Order Granting Joint Stipulation of Non-dischargeability of Debt" which was entered by this Court (Conrad, J.), pursuant to 11 U.S.C. §§523(a)(2), (4) and (6), on June 19, 1995, upon the stipulation of the movant and the debtor, Nelson Stryker Sperling. An initial Memorandum in support of the motion was filed at the Court's request on November 16, 2001. A hearing was held on December 11, 2001. Because the movant's Memorandum failed to provide an adequate legal basis for the requested relief, the Court adjourned the hearing and directed the movant to file a supplemental memorandum of law in accordance with Vt. LBR 9013-2.

In the interim, the debtor's former bankruptcy counsel notified the movant and the Court that he no longer represented the debtor and had not had any contact with the debtor for several years. Thereafter, the movant filed a Supplemental Memorandum on December 13, 2001. A second hearing on the motion was held on January 22, 2002, at which time the motion was adjourned and the movant was directed to serve the debtor.

Thereafter, the movant filed a Certificate of Service indicating that movant's counsel had mailed a copy of the motion and notice of hearing to the debtor by U.S. mail on January 29, 2002 at an address in South Carolina. A third hearing was held on the Motion to Renew Order on March 12, 2002. The debtor did not appear or file a response to the motion prior to that hearing. The movant's counsel could not confirm receipt that the debtor had received a copy of the motion and hearing notice but nonetheless persisted in his request for a renewal of the subject Order. The Court determined to take the matter under advisement. Thereafter, on March 12, 2002, the Clerk's Office received as returned mail from the Post Office the notice of hearing it had sent to the debtor at the South Carolina address provided by the movant.

This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. For the reasons stated below, the Motion to Renew Order is denied.

1. Factual Background

The history of the underlying judgment is quite convoluted. According to the movant's memorandum of law, the movant obtained a Judgment Order against the debtor in Vermont on January 20, 1995, localizing or domesticating a foreign judgment previously obtained against the debtor in Connecticut on March 22, 1985. The Connecticut judgment localized or domesticated a prior judgment originally entered in Colorado which is described as "dated January 11, 1982 *nunc pro tunc* December 28, 1991." *Memorandum in Support of Motion to Renew Order,* dated November 16, 2001, para. 4. The movant's original Colorado judgment reportedly arises from a claim for damages based upon allegations of conversion, breach of an agency agreement, intentional misrepresentation and theft.

In the Joint Stipulation of Non-dischargeability of Debt filed by the movant and debtor on May 12, 1995, the parties agreed that the "Judgment Debt" owed by the debtor to Pike was non-dischargeable under 11 U.S.C. §§523(a)(2), (4) and (6). The parties also agreed that the amount of the non-dischargeable claim was $5,400.92 plus interest at the 12% statutory rate, and that the claim would also include an award of costs in the amount of $105.79, as well as an award of reasonable attorney's fees for any future collection efforts, and would be subject to a payment schedule. On June 19, 1995, this Court (Conrad, J.) approved the parties'

joint stipulation pursuant to the "Order Granting Joint Stipulation of Non-dischargeability of Debt." The movant alleges in the instant motion that the debtor has not complied with his payment obligations regarding this non-dischargeable debt and seeks a "Renewed Judgment Order" from this Court accordingly. The debtor also indicates that the Motion to Renew Order raises an issue of first impression for this Court.

2. Discussion

The movant's motion seeks to have this bankruptcy court "renew" its prior Order Granting Joint Stipulation of Non-dischargeability of Debt in under 12 V.S.A. §2903, which states in pertinent part:

> A judgment lien shall be effective for eight years from the issuance of a *final judgment* on which it is based except that a petition for foreclosure filed during the eight-year period shall extend the period until the termination of the foreclosure suit.

§2903(a) [emphasis added]. The movant requests that this Court "renew" its "Judgment Order"in order "to allow a new eight year period to commence and to allow the Judgment Movant to record the Renewed Judgment Order in the land records for the Town Clerk's office under 12 V.S.A. § 2904."[1] Vermont law also provides:

> Actions on judgments and actions for the renewal or revival of judgments shall be brought within eight years after rendition of the judgment, and not after.

12 V.S.A. §506. In an action in Vermont based upon a judgment entered in a court of another state rendered more than eight years earlier, the burden is upon the plaintiff to prove that the eight year period has not elapsed. *See* Capen v. Woodrow, 51 Vt. 106 (1878). Moreover, where the enforcement period has almost run on a judgment, the judgment movant in Vermont can start the limitation period again by bringing an action on the judgment and obtaining a new judgment. *See* Koerber v. Middlesex College, 136 Vt. 4, 383 A.2d 1054 (1978).

The Motion to Renew Order filed in this Court must be denied for several reasons. First and foremost, there is no proof that the debtor has been served with the motion papers or the notice of hearing, nor of the

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[1] 12 V.S.A. §2904 provides in pertinent part:

> A judgment movant may record a judgment lien at any time within eight years from the date the judgment becomes final in the town clerk's office of any town where real property of the debtor is located.

extent of the movant's efforts to determine the current whereabouts of the debtor or to otherwise effect actual or constructive service under applicable law. *See* Ackermann v. Levine, 788 F.2d 830 (2nd Cir. 1986)(service upon a party must comport with applicable rules and constitutional due process notice requirements); In re Ms. Interpret, 222 B.R. 409, 415 (Bankr. S.D.N.Y. 1998)(due process requires notice which will forewarn parties about the action and allow them a reasonable opportunity to present their position); In re Shehu, 128 B.R. 26, 28 (Bankr. D. Conn. 1991)(contested matters generally require reasonable notice and the opportunity for a hearing). It has been held that service of a non-dischargeability complaint was not effective upon a debtor who was served by mail at the address listed on his chapter 7 petition because the debtor's discharge had been entered, his case had been closed and he had moved in the interim. *See* In re Martinez, 232 B.R. 458 (Bankr. C.D. Cal. 1999). Because the movant has not shown proper service of the subject motion upon the debtor or documented adequate efforts to effect service, the Court need not consider the merits of the motion to renew.

There are additional shortcomings apparent from the record, albeit not determinative for purposes of the operative finding of inadequate notice. The original judgment was apparently issued in Colorado and dated January 11, 1982. A district court judgment is valid in Colorado for twenty years [2] and its life may only be extended for a successive twenty year period if an action to extend the judgment is taken within the twenty year period, and typically a court may not regain jurisdiction by entering a *nunc pro tunc* judgment. *See* Mark v. Mark, 697 P.2d 799 (Colo. App. 1984); §13-52-102(2), Colo. R. S. A.; Rule 54(h), Colo. R.Civ. Proc. In this instance, there is no attempt by the movant to address this Colorado limitation period or to address its potential impact upon the chain of successive domesticated state court judgments obtained thereafter. Therefore, the movant has not met her burden of showing which limitation period applies and whether or not it has elapsed. Similarly, it is noted that a proceeding to revive a judgment generally must be brought in the court wherein it was rendered and in a forum that has personal jurisdiction over the defendant. *See*

[2] Six years for county court judgments.

C.J.S., Jurisdiction, §§ 648, 1048; *see also* 12 V.S.A. §2904 (providing for recording judgment in any town where real property of the debtor is located). The movant fails to explain why she is not seeking to renew the underlying judgment in a state court where the judgment was previously entered, i.e. Vermont, Connecticut or Colorado. There is also no showing that the debtor or his property is located within this district and whether this motion to renew is in conformity with any applicable statutory or case law in this regard.

Lastly, this Court notes that the motion states on its face that the movant is seeking to "renew" an "Order" of this Court and the movant has agreed that she is seeking to extend the Order of this Court rather than the underlying judgment. Based upon this argument, the movant asserts that the age and origin of the underlying judgment is not relevant. This Court finds that argument unpersuasive. The Order of this Court by its terms merely approved a non-dischargeability stipulation as filed by the parties. The subject Order does not purport to be a "final judgment" as set forth in 12 V.S.A. §2903 nor does it appear to have the typical attributes of a final judgment. It is noteworthy that the subject Joint Stipulation and Order were entered in a pending chapter 7 case and no adversary proceeding had been filed to determine whether the subject debt was dischargeable under the Bankruptcy Code. *See* Bankruptcy Rule 7001(6). Additionally, there is no legal support provided by the movant for the proposition that the subject order constitutes a final judgment that may be subject to "renewal" by this Court or that this Court may extend the life of the underlying successive state court judgments. *Cf.* In re Heckert, 272 F.3d 253 (4th Cir. 2001)(in a non-dischargeability proceeding, bankruptcy court lacks jurisdiction to alter existing state court judgment or to enter monetary judgment).

Even assuming proper service of motion papers upon a defending party, absent an adequate legal or factual basis provided by a movant to support a motion in accordance with Vt. L.B.R. 9013-2[3], this Court is without a sound basis for granting the requested relief. *See* In re Arboleda, 224 B.R. 640, 648 (Bankr. N.D. Ill. 1998)(bankruptcy court does not have a duty to research and construct legal arguments available to a

[3] Vt. L.B.R. 9013-2 provides in pertinent part:
Motions shall be supported by a memorandum of law filed with or as a part of the motion ... [and] shall include a concise statement of each basis for the pleading with relevant citations.

party). In this instance, no legal basis has been submitted for granting a renewal of a judgment which has already been in effect for over 20 years.

Based upon the foregoing, the movant's Motion to Renew Order Granting Joint Stipulation of Non-dischargeability of Debt is denied.

March 26, 2002
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge