

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

Clayton E. Pearson,
Debtor.

Chapter 7 Case
99-11311

Clayton E. Pearson,
Plaintiff,
vs.
Sandra J. Pearson,
Defendant.

Adversary Proceeding
00-1059 cab

Counsel: Debra L. Leahy, Esq.
Bethel, VT
Attorney for Debtor/ Plaintiff

Jay Abramson, Esq.
St. Johnsbury, VT
Attorney for Defendant

MEMORANDUM OF DECISION ENFORCING
11 U.S.C. §524(a)(2) INJUNCTION

The debtor's Amended Complaint to Enforce Permanent Injunction pursuant to 11 U.S.C. §524(a)(2) came before this Court for a final hearing on March 30, 2001. This Court considered the evidence submitted at trial, the record, and applicable law; and for the reasons set forth below, the request for an Order enforcing the §524(a)(2) injunction was granted.

Background

The parties, Clayton E. Pearson and Sandra J. Pearson, were granted a divorce pursuant to the Final Order and Decree ("Divorce Decree") issued by the Caledonia Family Court of Caledonia County, Vermont (Docket No. 50-3-98 Cadm) on November 6, 1998, based upon a stipulation of the parties. In pertinent part, the Divorce Decree provides that Clayton E. Pearson agreed to pay *inter alia* certain credit card debts and to indemnify and hold harmless Sandra J. Pearson from these credit card debts. It

is undisputed that at some point thereafter, the plaintiff fell into arrears on the credit card debt, reportedly due to an inability to pay it.

On September 28, 1999, the plaintiff filed a petition for relief under chapter 7 of title 11 U.S. Code (“the Bankruptcy Code”). The defendant/ former spouse, Sandra Pearson, was listed in Schedule F as a creditor holding a general unsecured claim. The debtor described the consideration for her claim as “various” and indicated that it was contingent, unliquidated, and disputed. The defendant was also listed as a co-debtor on Schedule H regarding the CitiBank MasterCard obligation. The defendant received notice of the filing of the case and was included in the mailing list thereafter. A discharge in favor of the plaintiff was entered on January 19, 2000.

On February 11, 2000 (approximately three weeks after the entry of the Order of Discharge), the defendant filed a *Motion for Modification of Spousal Support* in the state court divorce action. The defendant’s motion to modify the support provisions contains the following allegations, which this Court finds to be germane:

1. On November 6, 1998 this Court [Caledonia County Family Court] entered an Order requiring Plaintiff, Clayton E. Pearson, to pay spousal maintenance of \$1 per year until he has paid the Citibank and Chase VISA debt in full or has refinanced the debts to remove Defendant from liability. . . .
3. Plaintiff filed for Chapter 7 bankruptcy protection and a discharge has been entered by the United States Bankruptcy Court, District of Vermont, Case No. 99-11311 rlk on January 19, 2000. **This effectively discharged the Plaintiff’s obligation to pay the debts listed in paragraph 15 of the Final Order and Decree.** [emphasis added]
5. At the time of the Final Order the Plaintiff Clayton E. Pearson was unemployed. He became unemployed on August 13, 1998 after working in a supervisory capacity (supervising some 90 employees) for NSA Industries for many years and earning around \$40,000. Plaintiff was employed for 19 continuous years prior to his unemployment during the divorce proceedings.

6. In January of 1999, 4 weeks after the divorce was final, Plaintiff was re-hired by NSA and continues to work there. Upon information and belief, his current wages are substantially the same as before he left NSA.
...
8. Plaintiffs [sic] filing bankruptcy has deleteriously impacted the Defendants [sic] credit record hampering her ability to refinance the home as required by Paragraph 6 of the Final Order. The Final Order made Defendant liable for the existing mortgage payments totaling \$1,150.31 per month . . .
...
10. Plaintiff's action in not paying the Citibank and Chase debt is a willful violation of the Court's Final Order.
11. Plaintiff's failure to pay the Citibank and the Chase credit cards, as well as his re-employment immediately after the divorce became final constitutes a real, substantial and unanticipated change in circumstances justifying a modification of the maintenance award.

WHEREFORE, the Defendant respectfully requests that this Court grant an Order increasing the maintenance award to \$550 per month for the next 4 years (**representing the amount of credit card debt Plaintiff was obligated to pay**), requiring Plaintiff to designate Defendant as his beneficiary on his employer sponsored life insurance during the next 4 years as security for payment of the maintenance, costs and attorneys fees.

[emphasis added]

It therefore appears that the Defendant's Motion for Modification of Maintenance is based upon the following three allegedly unanticipated and material changes in circumstances: (1) that the defendant became solely liable for the joint credit card obligations as a result of the plaintiff's chapter 7 discharge; (2) that the plaintiff is now earning much more than he was at the time of the divorce (about \$40,000 per year more according to the defendant); and (3) that the plaintiff's bankruptcy filing has interfered with the defendant's ability to refinance the home as required under the Divorce Decree. It is significant that the relief the defendant requests is tied directly and unequivocally to the amount of the credit card debt defendant alleges was discharged by the plaintiff / debtor. In response to the modification motion filed in state court, the plaintiff successfully moved to re-open his bankruptcy case in order to file this adversary

proceeding. The Amended Complaint alleges that the defendant is violating 11 U.S.C. § 524 by attempting to modify spousal support based upon the discharge of joint indebtedness. The plaintiff further contends that the defendant's failure to object to the discharge of the credit card objections, in this Court, pursuant to 11 U.S.C. § 523(a)(15) precludes the defendant from seeking what is ultimately the same relief via a request, in state court, for modification of spousal support.

In her Answer to the Amended Complaint, the defendant admits that she "failed to file an Objection to Discharge pursuant to 11 U.S.C. §532(a)(15) [sic] [and thus] may not seek the same relief under the guise of a modification of spousal support" [see Amended Complaint; Amended Answer, at par 9]; however, she denies that the basis of her modification motion is plaintiff's discharge in bankruptcy. The parties filed cross-motions for summary judgment, which were denied on February 14, 2001. Thereafter, the parties filed separate final pre-trial statements and the matter proceeded to a non-jury trial on the merits, on March 30, 2001.

Issue

The issue presented is whether the Defendant's Motion for Modification of Maintenance filed in the state family court violates the injunction created by 11 U.S.C. §524(a)(2).¹

Jurisdiction

This Court has concurrent jurisdiction over this proceeding with the state court under §§ 157 and 1334 of title 28 U.S.C. since the filing of the Defendant's Motion for Modification of Maintenance in Vermont state court raises the question of enforceability of a bankruptcy provision, namely the enforcement of the injunction of §524(a)(2). See In re Ladak, 205 B.R. 709, 711-12 (Bankr. D.Vt. 1997).

¹ 11 U.S.C. §524(a)(2) provides:

(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.

Discussion

During these proceedings, both parties have requested that the Court rely upon the trial testimony and exhibits related to the provisions of Paragraph 15 of the Divorce Decree to support their respective positions. That provision states:

Maintenance and Alimony

15. Defendant, Sandra J. Pearson, is awarded \$1 per year spousal maintenance payable on December 1, 1998, and on such first day of December each year thereafter until such time as Plaintiff has paid the CitiBank [MasterCard] and Chase VISA debts in full, or has refinanced the debts to remove Defendant from liability thereon.

The Divorce Decree also provides in pertinent part:

Marital Debt

12. Each party shall assume sole responsibility of any debt incurred by them personally, since the date of separation, December 28, 1997, and each party shall hold the other harmless therefrom.
13. Plaintiff, Clayton E. Pearson, shall be solely responsible for the payment of the credit card debt to CitiBank MasterCard and Chase VISA.
14. Each party shall indemnify and hold the other party harmless from the debt he or she is ordered to pay.

The defendant justifies her Modification Motion on three grounds: (1) that it is based upon a change in circumstances, (2) that she has been financially harmed by the debtor's failure to pay joint credit cards and (3) that her share of the distributed debts is no longer equitable to her.

This Court recognizes that the consequences of one person filing bankruptcy may have harsh consequences on that person's creditors and, further, that the impact on a spouse or former spouse can be particularly severe. However, Congress has taken great care to fashion special remedies for family obligations in order to mitigate this effect and has done so in a way that balances the debtor's obligations

to family members against his or her right to a fresh start. *See Forsdick v. Turgeon*, 812 F.2d 801 (2nd Cir. 1987).

At the final hearing in this case, the Court heard testimony of both spouses about what they understood to be the facts and circumstances at the time of the divorce and what they understood to be the basis of the property master's conclusions. The parties also verified the contents of the divorce decree and their stipulation underlying that decree, and testified as to the events that led up to and resulted from the debtor's bankruptcy filing. Additionally, at the hearing this Court had the opportunity to observe the demeanor of the witnesses and to determine the relative credibility of their testimony on conflicting matters.

Findings of Fact and Conclusions of Law

Based upon the testimony of both parties and the pleadings, papers and exhibits filed, this Court makes the following findings of fact and conclusions of law:

First, this Court finds that the plaintiff's obligation to pay the subject credit card debts is a property distribution and is not a debt which is "actually in the nature of support." *See* 11 U.S.C. §523(a)(5). The subject credit card obligation is therefore discharged. This specific finding is based in part upon the fact that the defendant's counsel acknowledged the credit card obligation to be a property distribution in his closing statement.

Second, this Court finds that the Defendant's Motion for Modification of Maintenance is not based upon an actual change in circumstances. The testimony of both parties makes clear that even though it may not have been articulated in the hearings before the property master, both parties were fully anticipating that the plaintiff would return to his prior employment and his prior level of income. There was no admissible, credible evidence to demonstrate that the property master allocated debts or assets based upon the debtor's unemployed status.

Third, this Court finds that the defendant has not been financially harmed by the plaintiff's failure to pay the subject joint credit cards. The testimony makes clear that there were only two, not three, joint credit cards and that the defendant has not been held liable on either. Both parties testified that the plaintiff paid the Sears joint credit card debt and that the defendant was absolved of liability on the CitiBank Master Card. When asked by the plaintiff's counsel if she suffered any financial harm or incurred any debt as a result of the plaintiff discharging his credit card obligations, the defendant responded that the only two types of harm she suffered were a "black mark" on her credit history and an inability to refinance the residence. However, the testimony also revealed that the defendant only filed one application to refinance and that was very soon after the debtor filed his bankruptcy petition. The fact that the defendant has not been held liable for any of the credit card debt which the plaintiff discharged causes this Court some concern about why the defendant should believe that she is entitled to additional support in an amount equal to an amortization of that debt. Such relief would effectively punish the plaintiff for not having paid a debt that was discharged in bankruptcy and give a windfall to the defendant who also has no obligation to pay it.

Lastly, this Court finds that the Defendant's Motion for Modification of Maintenance is in fact filed primarily to reinstate a debt legally discharged by bankruptcy. In this motion, the defendant seeks to address what she perceives to be an inequitable allocation of the debts caused by the plaintiff's discharge. While the defendant may find it fundamentally unfair that the plaintiff now has no debts and she still has the two mortgages to pay, her pursuit of a modification of the support provision on these grounds is tantamount to seeking to undercut the debtor's discharge. This is precisely the type of conduct §524(a)(2) is designed to enjoin. See In re Ladak, 205 B.R. 709 (Bankr. D.Vt. 1997); In re Brabham 184 BR 476 (Bankr. D. S.C. 1995).

The plaintiff was directed by the state family court to pay the subject credit card obligations with the caveat that if he failed to do so, the defendant was entitled to seek a modification of the support award -

- presumably to get an increase in support sufficient to offset the credit card obligation which reverted to her. The fact that the defendant's right to modify the support obligation is contingent upon the plaintiff's payment of these credit cards does not transform the credit card debt from a property distribution into a support obligation. In order to avoid enforcement of the §524(a)(2) injunction against this motion to modify, the non-debtor former spouse must demonstrate grounds for modifying the support award that are distinct from the discharge obtained in a bankruptcy case. The defendant has failed to meet that burden.

The defendant's only remedies may be to continue her efforts to refinance the marital residence or to file bankruptcy herself. Admittedly, these may cause hardship to the defendant. However, to rule otherwise would undercut the plaintiff's bankruptcy discharge and violate his rights to a fresh start and enforcement of the §524 injunction.

Conclusion

Since the Court has found that the plaintiff has demonstrated grounds for enforcing the §524(a)(2) injunction, the request for injunctive relief is granted and the defendant is enjoined from proceeding with her Motion for Modification of Maintenance filed in the case of Clayton E. Pearson v. Sandra J. Pearson, Caledonia Family Court, Docket No. 50-3-98 Cadm, Caledonia County, State of Vermont.

May 9, 2001
Rutland, Vermont

/s/ Colleen A. Brown
Colleen A. Brown
United States Bankruptcy Judge