

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Thomas O'Brien &
Debra O'Brien,

Debtors.

Case No.: 98-17122

Chapter 7

Thomas O'Brien &
Debra O'Brien,

Plaintiffs,

Adv. Pro. No.: 00-90300

- v -

JRD Ltd.,

Defendant.

APPEARANCES:

Deily, Dautel & Mooney, LLP.
Attorneys for the Debtors
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Linda T. Taverni, Esq.
Of Counsel

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Paula Nadeau Berube, Esq.
Of Counsel

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

Memorandum, Decision & Order

Before the court are dueling motions for summary judgment. The Plaintiffs, Thomas and Debra O'Brien ("Debtors"), fired the first salvo; the Defendant, JRD, Ltd. ("Creditor")

responded.¹ This is a core proceeding within the court's jurisdiction pursuant to 28 U.S.C. §§ 157(a)(2)(A) and (I) and 1334(b).

Facts

The undisputed facts follow:

1. On April 17, 1997, the Debtors entered into a Stock Purchase Agreement ("Agreement") with John C., Anita and Jessica Duncan ("Duncans") where the Debtors agreed to purchase and the Duncans agreed to sell shares of a corporation known as Syd & Dusty's Outfitters, Inc.
2. The Creditor is a corporation wholly owned by John C. Duncan; Mr. Duncan is its president.
3. Paragraph 15 of the Agreement is an indemnification clause including third party indemnification to the Creditor. This paragraph provides:

Purchaser agrees to indemnify and hold Sellers harmless for any losses Sellers, the Corporation or J.R.D. Ltd. may incur, ... as a result of any amounts owed to vendors for any accounts receivable assumed by Purchaser at closing or for any liabilities incurred by Purchaser after the date of closing.
4. The Debtors could not fulfill the terms of the Agreement and on October 26, 1998, the Duncans entered a default judgment in the Warren County Supreme Court for the purchase amount due.
5. On October 30, 1998, the Debtors filed their Chapter 7 petition.
6. The Duncans were listed on the petition and had notice of the bankruptcy proceeding. On December 16, 1998, they, with advice of counsel Paula Nadeau Berube., Esq., of Bartlett, Pontiff, Stewart & Rhodes, P.C., stipulated to vacate the October 26th judgment as a preference.
7. On March 4, 1999, the Debtors received their discharge.

¹The Creditor's response was identified as a "cross motion" for summary judgment. The court has repeatedly indicated that there is no such pleading as a "cross motion." All requests for affirmative relief must be duly noticed and served on parties in interest. However, since the Debtors have not objected and because they were given an opportunity to respond, the court will consider the Creditor's papers.

8. On April 17, 2000, Niagra Mohawk Power Corporation obtained a judgment against the Creditor for \$3,208.40 for utility services provided to Syd & Dusty's Outfitters while the company was owned by the Debtors. The Creditor satisfied this judgment.
9. On or about July 17, 2000, the Creditor commenced an action against the Debtors in Glens Falls City Court. The Creditor sought to recover the \$3,000, relying on the indemnification provision of the Agreement. The application did not reference the Debtors' bankruptcy.
10. On July 21, 2000, the Debtors' attorney sent a letter to the Creditor, copying the Glens Falls City Court, advising of the discharge and requesting that the action be discontinued. However, the Debtors' attorney did not appear on the return date and, on August 2, 2000, a default judgment was entered.
11. The Creditor refuses to vacate the judgment filed at the Warren County Clerk's Office.
12. On August 23, 2000, the Debtors made a letter request to reopen the judgment in Glens Falls City Court. This request was denied due to a procedural defect. Thereafter, they made a motion to open the default. Both parties appeared, through their attorneys, and the motion was orally argued. Both parties also submitted memoranda of law.
13. The Debtors withdrew the motion to open the default. Instead, they requested and received an order of this court reopening their Chapter 7 case. They amended the petition to include the Creditor, separate from its president, and filed the current adversary proceeding.

Arguments

The Debtors argue that this debt was discharged and the attempt to collect it violates 11 U.S.C. § 524.

In contrast, the Creditor contends that the Glens Falls City Court has determined that the Debtors remain personally liable on this debt, has issued a judgment to that effect, and, pursuant to the Rooker-Feldman doctrine, this determination is controlling. The Creditor further argues

that summary judgment is inappropriate because there is an allegation of fraud with respect to the debt in question. Thus, it invokes 11 U.S.C. § 523(a)(3).

Discussion

Summary judgment is an extreme remedy to be granted only when there are no disputed material facts and the evidence must be viewed in a light most favorable to the nonmoving party.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Catrell*, 475 U.S. 574 (1986). 11 U.S.C § 524 governs discharge and this section states, in part:

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

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, ... of this title, whether or not discharge of such debt is waived;

(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 ...

If this debt were discharged, the position urged by the Debtors, then the Creditor's actions clearly violate this provision. For the following reasons, the court finds that the debt was discharged and summary judgment, on the Debtors' behalf and with respect to the discharge injunction violation, is granted. A hearing will be scheduled to determine the damages, if any, for this violation.

Rooker-Feldman Doctrine

The Creditor argues that a state court has determined it is entitled to a judgment and, pursuant to the Rooker-Feldman doctrine, the state court judgment is binding. Rooker-Feldman²

²Rooker-Feldman is derived from two Supreme Court cases: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

is an oft-cited doctrine that stands for the proposition that lower federal courts, including bankruptcy courts, lack subject matter jurisdiction to act as an appellate court to a state court determination. The Second Circuit has directed that two questions must be addressed when attempting to discern the applicability of Rooker-Feldman. These are: “whether (1) the issue in question was actually and necessarily decided in a prior proceeding, and (2) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the first proceeding.” *Hachamovitch v. Debuono*, 159 F.3d 687, 698 (2d Cir. 1998) (citations omitted).

In the present case, a review of the pleadings³ before the Glens Falls City Court leads to the conclusion that the issue in question, whether this debt was discharged, was not “actually and necessarily decided in [the] prior proceeding.” *Id.* The “complaint” before the City Court is actually a one-page application alleging that the Debtors “breached [the] contract to indemnify J.R.D....” There is no mention of the bankruptcy proceedings or that this debt, derived from a clause of a contract that was listed on the bankruptcy petition, might be nondischargeable pursuant to 11 U.S.C. § 523(a)(3). The “complaint” was given a return date of August 2, 2000.

On July 21, 2000, the Debtors’ attorney responded by sending a letter to the Creditor, copied to the Clerk of the Glens Falls City Court, stating that the debt had been discharged and that the attempt to collect it was enjoined by the Bankruptcy Code. The letter further requested that the Creditor provide proof that the action would be withdrawn prior to the return date. Unfortunately, and for reasons unknown, the Debtors’ attorney did not follow-up on this letter.⁴

³The pleadings submitted with the summary judgment motions were insufficient to render a decision. Therefore, the court requested and received additional documentary submissions from the parties.

⁴In addition, the Debtors’ attorney neglected to appear on the return date.

The Creditor did not withdraw the action and on the return date the Glens Falls City Court issued a default judgment against the Debtor.

On August 23, 2000, the Debtors' attorney attempted, by letter request, to have the default judgment opened. This is the first "pleading" before the City Court that raised the bankruptcy discharge. The Creditor responded with a letter arguing that, procedurally, a motion would be necessary to open the default and that, substantively, no sufficient legal reason was given to undo the default.

On September 8, 2000, the City Court Clerk sent a letter to the Debtors' attorney informing her that the judge had reviewed and denied her letter request. The Clerk advised that to open the default a motion was necessary. This letter concluded, "BUT relief should be more properly sought at U.S. Bankruptcy Court." (Doc. 25.) The Debtor then made the required motion to open the default and both parties briefed the issue. Oral argument was held and decision reserved. However, Debtors' attorney asserts that statements made by the judge at the oral argument indicated that "he felt the Bankruptcy Court was the proper venue for a determination of this issue." (Debtors' Attorney's Affidavit in Support ¶ 24.)

Based upon the letter by the Court Clerk, and without deciding whether that court could invoke jurisdiction, this court concludes that the City Court did not exercise jurisdiction and did not decide whether this debt was discharged. Thus, Rooker-Feldman is inapplicable.⁵

Therefore, the court will address the merits of the dueling summary judgment motions; it finds that the Creditor has no claim under 11 U.S.C. § 523(a)(3). The debt in question was included in

⁵Since determining that the issue was not decided in the prior proceeding, it is not necessary for the court further determine whether there "was a full and fair opportunity to litigate the issue.." *Hachamovitch v. Debuono*, 159 F.3d at 698.

the Debtors' discharge.

11 U.S.C. § 523(a)(3)

11 U.S.C. § 523(a)(3)(B) states:

- (a) A discharge under ... this title does not discharge an individual debtor from any debt –
 - (3) neither listed nor scheduled ... in time to permit —
 - (B) if such debt is of a kind specified in paragraph (2), (4), or (6) ... timely filing a proof of claim and timely request for a determination of dischargeability ... unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.

The Creditor invokes this section, arguing that it, specifically, was not scheduled nor listed in time to permit the filing of an adversary proceeding to determine the dischargeability of this debt. It contends that this omission is fatal. However, it is undisputed that John Duncan, the president and shareholder of the Creditor, was duly listed on Schedule “F”; he actively participated in the bankruptcy case. *See In re Linzer*, 2001 WL 760251 (Bankr. E.D. N.Y. 2001) (“The general rule for imputing an agent’s notice or knowledge applies to bankruptcy cases.” *Id* at 3); *see also In re Santa Rosa Truck Stop, Inc.*, 74 B.R. 641 (Bankr. N.D. Fla. 1987) (citing *In re Shafer*, 63 B.R. 194 (Bankr. Kan. 1986)). Moreover, the contract giving rise to this claim was also scheduled. Thus, this Creditor was on actual notice of the filing. Therefore, 11 U.S.C. § 523(a)(3) is unavailable to it and the debt was discharged.

Since this debt was discharged, the Creditor’s subsequent default judgment was obtained in violation of the discharge injunction and is void. Furthermore, the issue of damages due to this violation must be addressed. The court had scheduled an evidentiary hearing for July 6, 2001. The Creditor’s attorney had requested that the hearing date be moved. Since there appears to be legitimate reasons to reschedule the trial and because the request was timely made, the

court will reschedule the evidentiary hearing on the limited issue of damages, if any, for violation of the discharge injunction, for October 22, 2001 at 9:30 a.m.; a separate scheduling order will be issued.⁶

Conclusion

For the above reasons, the court determines that the debt was discharged and that the Creditor's attempt to collect it violated the discharge injunction. A hearing on damages, if any, for this violation is scheduled as previously noted.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge

⁶The new scheduling order will set a trial date only. The current summary judgment motion was brought pursuant to a previous scheduling order, thus, discovery should be complete.