

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

PAUL S. HUDSON,

Debtor.

Chapter 7

Case No. 00-11683

RICHARD T. CORVETTI,

Plaintiff,

Adv. Pro. No. 04-90005

v.

PAUL S. HUDSON,

Defendant.

APPEARANCES:

Paul S. Hudson
Pro Se Defendant
2430 Vineyard Lane
Crofton, Maryland 21114

Donohue, Sabo, Varley & Huttner, LLP
P.O. Box 15056
24 Aviation Road
Albany, New York 12212-5056

Kenneth G. Varley, Esq.

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

MEMORANDUM-DECISION AND ORDER

Creditor Richard T. Corvetti seeks a declaration that he is not bound by his post-petition settlement agreement with Debtor Paul S. Hudson. (Am. Compl. ¶ 51 (No. 1).) The specific question posed by Corvetti's second cause of action in this adversary proceeding is whether the March 7, 2002 Settlement Agreement (the "Agreement") (Ex. 1 to the *Aff. of Richard T. Corvetti in Supp. of Mot. for Summ. J.*, Sept. 20, 2004 (No. 30)) constitutes a reaffirmation agreement made in violation of 11 U.S.C. § 524(c).

JURISDICTION

The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This adversary proceeding constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

FACTUAL AND PROCEDURAL HISTORY¹

The court issued a decision denying Hudson a Chapter 7 discharge on August 21, 2001. *See Washington 1993, Inc. v. Hudson (In re Hudson)*, Ch. 7 Case No. 00-11683, Adv. Pro. No. 00-90091, slip. op. (Bankr. N.D.N.Y. Aug. 21, 2001), *remanded sub nom. Hudson v. Corvetti*, No. 3:01-CV-01474, slip. op. (N.D.N.Y. June 13, 2003). The parties executed the Agreement in the context of Hudson's appeal of that decision before the Honorable Thomas J. McAvoy, United States District Court Judge. On remand, the court reaffirmed its earlier decision denying Hudson a discharge. *See In re Hudson*, slip. op. at 14 (Bankr. N.D.N.Y. Dec. 30, 2005), *appeal filed* (Bankr. N.D.N.Y. Jan. 9, 2006).

To resolve several lawsuits between the parties pending in various state and federal courts, including the discharge proceeding in this court, the parties executed the eleven page Agreement now at issue. The Agreement must be read in conjunction with the parties' simultaneously executed Release (Ex. 1 to the *Aff. of Richard T. Corvetti in Supp. of Mot. for Summ. J.*, Sept. 20, 2004), and Hudson's January 21, 1999 Assignment to Corvetti of all Hudson's rights, title, and interest in all

¹ This court, the state court, the United States District Court for the Northern District of New York, and the United States Court of Appeals for the Second Circuit have issued countless decisions and orders in matters involving Mssrs. Hudson and Corvetti. In the parties' own words, "[they] have demonstrated antagonism for each other *spanning many years . . .*" (Agreement at 2) (emphasis added.) The court will not recite the parties' complete history here. The parties are undoubtedly familiar with the factual and procedural background of this adversary proceeding and, thus, the court briefly summarizes the undisputed material facts relevant to the instant decision.

wrongful death lawsuits against the government of Libya arising from the death of his daughter Melina in the 1988 Pan Am Flight 103 explosion over Lockerbie, Scotland (the “Libyan Lawsuits”).

Paragraph 9 of the Agreement provides in relevant part:

[E]ach party . . . acknowledges and agrees to the following provisions:

....

(d) In regard to the Assignment:

....

(viii) It is . . . the agreement of the parties that Corvetti shall be entitled to receive all of Hudson’s interest in [the Libyan Lawsuits] up [to] the amount of \$385,501.24, with interest of 9% accruing as of November 12, 1999, and that Hudson will take all necessary steps to permits [sic] Corvetti to collect and receive such amounts and shall take no action whatsoever to interfere with Corvetti’s rights to collect and receive such amounts.

(ix) Hudson expressly waives any claim that any discharge he receives in bankruptcy, any provision of this Agreement or any release executed in connection with this Agreement affects in any way Corvetti’s right to receive all of Hudson’s interest in any lawsuits whatsoever against the government of Libya and arising from [sic] the death of Hudson’s daughter Melina Hudson.

(Agreement at 5.) The meaning and ramifications of this language are now in dispute.

Paragraph 3 of the Agreement prohibits Corvetti from continuing to oppose Hudson’s appeal of the court’s decision denying Hudson a discharge. (Agreement at 3.) On December 9, 2002, Hudson commenced a state court action against Corvetti seeking \$3,000,000 in damages and specific performance for alleged violations of the Agreement. (*Pl.’s Statement of Uncontested Facts* ¶ 29 (No. 124); Am. Compl. ¶ 36.) This adversary proceeding was commenced by Corvetti’s filing of a complaint on January 5, 2004. The complaint sought, *inter alia*, to enjoin Hudson from commencing or continuing legal actions against Corvetti on grounds that Corvetti improperly continued to oppose Hudson’s discharge. On April 15, 2004, Corvetti amended the complaint (No. 20) to include a request for declaratory relief—a holding that Corvetti is not bound by the terms of

the Agreement. (*Pl.'s Mem. of Law* at 2-3 (No. 146).)

On December 8, 2004, Corvetti moved for summary judgment on both counts of the Amended Complaint. (No. 30.) After several adjournments requested by the parties, the court issued an oral decision on March 10, 2005, wherein the court granted Corvetti's motion as to the first cause of action, and it denied the rest. The court issued an Order in conformance with its oral decision on March 17, 2005 (Nos. 67), which the Debtor then appealed (No. 68, 79). *See Hudson v. Corvetti*, No. 1:05-CV-00472 (N.D.N.Y. Apr. 19, 2005). Hudson filed a competing motion for summary judgment on March 8, 2005. (No. 52.) Hudson withdrew a portion of that motion, and the court denied the balance of the motion by Order dated April 6, 2005 (No. 88). Hudson also appealed the court's denial of his summary judgment motion (No. 92). *See Hudson v. Corvetti*, No. 1:05-CV-00560 (N.D.N.Y. May 9, 2005). Hudson did not, however, request a stay pending appeal with respect to either summary judgment Order. Hudson's appeals were consolidated by the United States District Court for the Northern District of New York; due to the substantial delay occasioned by the parties' disagreement over the record on appeal, however, the parties requested that the District Court stay the consolidated appeals pending this court's decision.

The court scheduled an evidentiary hearing on Corvetti's second cause of action for declaratory relief for September 7, 2005. At that time, however, the court determined that the question presented was one of law, not fact: does Paragraph 9 of the Agreement constitute a reaffirmation agreement on its face?² The parties were given an opportunity to make further

² The court has listened to the tape recording of the September 7, 2005 hearing to ensure that it accurately recounts the record. The parties did raise several disputed questions of fact concerning the enforceability of the Agreement, but those questions are best left to either the state court where Hudson's breach of contract action is pending against Corvetti, or to the District Court where the Agreement originated.

submissions and the matter was taken under advisement on November 1, 2005.

ARGUMENTS

Corvetti argues that the Agreement is subject to the requirements of 11 U.S.C. § 524(c) and (d) because (1) Hudson's promise to remain liable for the principal sum of \$385,501.24, plus interest of 9% from November 12, 1999, was part of the consideration that Corvetti received for entering into the Agreement; and (2) Corvetti's underlying judgment against Hudson on which he is entitled to receive interest would normally be dischargeable in bankruptcy. (*Pl.'s Mem. of Law* at 9.) Corvetti further argues that Hudson is personally liable under Paragraph 9 of the Agreement. (*Id.* at 11.) According to Corvetti, however, Hudson would be personally liable for the sum due only if he were to receive proceeds from the Libyan Lawsuits and then elect not to use them to satisfy the debt to Corvetti. (*Id.*) Corvetti's interpretation of the Agreement is that it did not create "a situation where . . . Corvetti has an interest and a defined *res* so as to avoid the need for a reaffirmation agreement." (*Pl.'s Submission in Resp. to Def.'s Submission* at 7 (No. 149).)

The parties do not dispute that the formal requirements of 11 U.S.C. § 524 were not complied with. Corvetti contends that a reaffirmation agreement must meet the statutory requirements set out in 11 U.S.C. § 524 in order for the agreement to be effective. (*Id.* at 3.) Corvetti, therefore, contends that the Agreement in its entirety is unenforceable. (*Id.* at 14.)

Hudson's first argument is one of policy; he states that the reaffirmation rules must be construed in his favor because the congressional intent behind 11 U.S.C. § 524 was to protect to the debtor. (*Def.'s Brief on Second Cause of Action on Bankruptcy Issues* at 7 (No. 148).) He suggests that the court should not allow Corvetti to use 11 U.S.C. § 524 as a sword to escape any liability he may have for his alleged breach of the Agreement.

Hudson further argues that the Agreement constitutes a post-petition settlement agreement, not a reaffirmation agreement, because the parties received separate consideration for the Agreement; “that consideration . . . imposes multiple new obligations on the parties that did not exist prior to the [A]greement.” (*Id.* at 7.) Hudson states that the Agreement, on its face, was not simply one to reaffirm his preexisting obligation to pay Corvetti an otherwise dischargeable debt. (*Id.*)

Hudson also argues that the Agreement provides Corvetti only *in rem* rights. (*Id.* at 8.) Because Corvetti agreed to release Hudson from all actions, suits, debts, controversies, etc., Hudson believes “the Agreement expressly bars Corvetti from seeking to hold . . . Hudson *personally* liable for any (alleged) debt.” (*Id.*) “Given that the . . . Agreement plainly does not affirm . . . Hudson’s personal liability for otherwise dischargeable debts, but rather expressly relieves him of personal liability and limits Corvetti to *in rem* liability . . . , the Agreement cannot, as a matter of law, be deemed a reaffirmation agreement.” (*Id.* at 9.) In sum, Hudson argues that the Agreement cannot be deemed void for failure to comply with the statutory requirements of 11 U.S.C. § 524.

DISCUSSION

The question presented is not a difficult one, and, for reasons discussed *infra*, the court concludes that Corvetti’s second cause of action must be dismissed.

Section 524(c) provides an exception to the discharge provisions for an agreement which reaffirms a dischargeable debt. “A reaffirmation agreement is a voluntary agreement a debtor may make with a creditor to reassume the in personam liability of an otherwise dischargeable debt.” 31 Williston on Contracts § 78:25 (4th ed. 2005); *see also In re Walker*, 180 B.R. 834, 836 (Bankr. W.D. La. 1995) (“a reaffirmation agreement has the effect of reaffirming a debtor’s pre-existing *in personam* liability on the underlying obligations giving rise to a debt”). Because the reaffirmation

agreement compromises a debtor's fresh start by resurrecting an otherwise dischargeable debt, it is to be strictly construed in favor of the debtor and against the creditor. *Id.*; see also *In re Watson*, 192 B.R. 739, 747 (B.A.P. 9th Cir.1996), *aff.d.*, 116 F.3d 488 (9th Cir. 1997).

In this case, the court need not address the parties' consideration arguments because it finds that the Agreement does not impose personal liability upon Hudson. The Agreement is not ambiguous; the plain meaning of Paragraph 9 is that Corvetti may recoup his judgment from proceeds of the Libyan Lawsuits. It cannot be inferred from the parties' chosen language that, if the proceeds are somehow insufficient, Corvetti may then look to Hudson's personal assets for payment of the obligation. Based on the four corners of the document, that is not what Corvetti bargained for; what he bargained for was the right to receive all of Hudson's **interest in the Libyan Lawsuits** up to the specified amount of \$385,501.24, with interest of 9% accruing as of November 12, 1999, and a promise from Hudson not to interfere with Corvetti's collection from Libyan proceeds. The latter term makes perfect sense given the parties' tortured history. A broken promise by Hudson may give rise to certain state court rights, but it does not give rise to personal liability.

CONCLUSION

Based on the foregoing,

It is **HEREBY ORDERED**, that Corvetti's request for an order declaring the Agreement unenforceable as violative of the provisions of 11 U.S.C. § 524 is hereby denied, and Corvetti's second cause of action is dismissed.

Date: 2/15/06
Albany, New York

/s/ Robert E. Littlefield, Jr.

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