

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Bruce K. Sebast &
Patricia A. Sebast,

Case No.: 99-16384
Chapter 7

Debtors.

APPEARANCES:

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James E.D. Doern, Esq.
Of Counsel

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

Memorandum, Decision & Order

Before the court is Bruce and Patricia Sebast's ("Debtors") request for damages based upon the court's finding that World Collections, Inc. d/b/a Castlewood Group ("Creditor") had violated 11 U.S.C. § 524. The court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (G) and 1334(b).

Facts

On January 23, 2002, this court issued a decision finding the Creditor had violated the discharge injunction when it initiated a New York state court action seeking monetary damages for an alleged breach of a covenant not to compete. However, the court further found that the Creditor's request for an permanent injunction did not violate 11 U.S.C. § 524. Familiarity with

the underlying facts is presumed, however, a brief recitation of the salient facts follows:

On or about July 17, 1999, the Creditor and Debtor Bruce Kevin Sebast d/b/a Lawn Care entered into an asset purchase agreement. This agreement contained a covenant not to compete. On November 4, 1999, the Debtors filed a voluntary Chapter 7 bankruptcy petition and the Creditor was duly noticed of the filing. On March 3, 2000, the Debtors received their discharge.

On September 27, 2000, the Creditor filed a Summons and Complaint in the New York State Supreme Court, alleging that the Debtors and others related to them violated the covenant not to compete. The complaint requested monetary and injunctive relief. On or about October 24, 2000, the Debtors moved to reopen their bankruptcy case, seeking a determination that the Creditor was in contempt of the discharge injunction. On November 9, 2000, the court ordered the case reopened and a scheduling order was issued. After an evidentiary hearing was held and submissions received, as previously noted, the court found the request for money damages violated the discharge injunction but the request for a permanent injunction did not. The court then allowed the parties additional time to provide submissions on the issue of damages. Both parties timely complied.

Argument

The Debtors' first request approximately \$8,000 in attorneys' fees as remuneration for the cost incurred in defending the allegations state court. They further request punitive damages.

The Creditor argues the Debtors have failed to establish damages specifically traceable to its request for money damages. It contends the Debtors would have had to have defended the request for an injunction in the state court and, therefore, it should not have to compensate them

for these expenses. Finally, it asserts punitive damages are not warranted.

Discussion

The court's latest foray into violations of the automatic stay and the discharge injunction can be found in *In re Atkins*, Case No. 86-10604, Adv. Pro. No. 00-90144 (June 18, 2002). In *Atkins*, this court reaffirmed its position that notwithstanding the "American Rule,"¹ reimbursement of attorney's fees are proper, under certain circumstances, for violations of the automatic stay and the discharge injunction. *Id*; *See, In re Alberto*, Case No. 98-14005 (Oct. 20, 2000), *rev'd on other grounds*, 271 B.R. 223 (N.D.N.Y 2001); *In re O'Brien*, Case No. 98-17122, Adv. Pro No. 00-90300 (May 6, 2002).

Relying on these decisions and after fully analyzing the time records submitted with the request for attorneys' fees, the court grants \$1,575.00 in compensatory damages. This amount encompasses the charges incurred from October 20, 2000 to November 9, 2000. The court will not award compensatory damages beyond November 9, 2000 because once the bankruptcy case was reopened, the state court proceeding was suspended. Moreover, after that date the distinction between the request for injunctive relief verses the monetary relief was inextricably intertwined with the possible violation of 11 U.S.C. § 524. The Debtors have failed to demonstrate that any attorneys' fees were directly and specifically traceable to the request for monetary relief.

Finally, the court disagrees with the Debtors' argument that punitive damages are warranted. There is no evidence presented indicating that the Creditor should be punished since

¹The "American Rule" stands for the proposition that litigants pay their own costs and expenses incurred during the course of litigation. *See Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975).

the Debtors have failed to establish that the Creditor acted in bad faith or with maliciousness. *In re Owen*, 169 B.R. 263 (Bankr. D. Me. 1994). In fact, the court found the request for injunctive relief to be proper. Therefore, based on the lack of evidence presented, the Debtors' request for punitive damages is denied.

Conclusion

For all these reasons, the Debtors are awarded \$1,575.00 in compensatory damages. Their request for punitive damages is denied.

Dated:
Albany, New York

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