

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re: Stanley Lawrence DiStefano, Jr.,

Case No. 16-10694  
Chapter 7

Debtor

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APPEARANCES

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

**MEMORANDUM-DECISION**

Before the Court is a Memorandum-Decision and Order issued by the Honorable Lawrence E. Kahn, United States District Court Judge, Northern District of New York. (ECF No. 455). The District Court remanded the matter to this Court for “an initial determination on whether the relief sought by Endurance is actually an advisory opinion.” *Id.* at 5. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(A) and 1334(b).<sup>1</sup>

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<sup>1</sup> Unless otherwise indicated, all chapter and section references are to the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (2022) (the “Bankruptcy Code”).

## **BACKGROUND/ FACTS**

On November 26, 2019, Stanley Lawrence DiStefano, Jr. (“Debtor” or “DiStefano”) received his discharge. (“Discharge Order”) (ECF No. 403). On December 10, 2019, Endurance American Insurance Company (“Creditor” or “Endurance”) filed a motion seeking an order “Reconsidering and/or Amending the Order of Discharge or, in the Alternative, Vacating the Order of Discharge and/or Deferring the Entry of Discharge as to Endurance . . . .” (“Motion to Reconsider”) (ECF No. 406). Endurance filed the Motion to Reconsider pursuant to the Federal Rules of Bankruptcy Procedure (collectively “FRBP” or individually “Rule”) 9023 & 9024 and § 105(a). *Id.* The Debtor opposed. (ECF No. 411). On February 5, 2020, this Court denied the Motion to Reconsider, stating the reasons on the record. (ECF No. 417, Hrg. at 10:28). On February 7, 2020, a written Order was entered memorializing this Court’s ruling. (ECF No. 418).

On February 21, 2020, Endurance appealed the denial of the Motion to Reconsider. (ECF No. 419). On July 22, 2021, the District Court returned the matter to this Court to clarify the perceived ripeness question. (ECF No. 455). A hearing was set and the parties were instructed to submit simultaneous pleadings supporting their respective positions. (ECF No. 459, Hrg. at 7:58). On August 27, 2021, both parties filed their papers. (ECF Nos. 460 & 462). On August 30, 2021, the Debtor filed a reply. (ECF No. 464). On September 3, 2021, Endurance filed its reply and the matter was fully before the Court. (ECF No. 466).

## **ARGUMENTS**

Both DiStefano and Endurance agree, albeit for different reasons, that the Motion to Reconsider was ripe for a judicial determination. The Debtor posits Endurance’s Motion to Reconsider was properly before this Court “because it was directed to an already final . . . order of the Court; the discharge.” (ECF No. 460 at ¶ 5). DiStefano states, “The issue was ripe because

the discharge had been issued and Endurance, to the very real and significant prejudice of the Debtor, had created the threat that Debtor's discharge would be revoked and his fresh start would be denied." *Id.* at ¶ 7 (emphasis in original). The Debtor continues, "The issue was also ripe because Endurance wanted a determination on its Motion such that it could bring an appeal if that determination, which happened, was adverse." *Id.* at ¶ 8.

Endurance asserts, "If [it] did not timely move for reconsideration or timely appeal [the] Reconsideration Denial Order, the Discharge Order would arguably be a final non-appealable order. . . . Thus, this was the appropriate time for Endurance to move for reconsideration and file the appeal." (ECF No. 462 at ¶ 20). The Creditor concludes "that the matter is a live controversy ripe for decision . . . ." *Id.* at 6.

## **DISCUSSION**

The District Court's remand order specifically states, "[This] Court finds that the Bankruptcy Court did not adequately explain whether it had subject matter jurisdiction . . . ." (ECF No. 455, p. 4). "[T]his case is remanded to the Bankruptcy Court for further proceedings, if necessary, and for further explanation of its reasoning with respect to the aforementioned ripeness issue . . . ." *Id.* at 6. Accordingly, this Court will address subject matter jurisdiction first and then the ripeness question.

### **I. Subject Matter Jurisdiction.**

Congress has outlined a non-exhaustive list of matters that are considered "core" proceedings under the Bankruptcy Code. 28 U.S.C. § 157. These include matters concerning the administration of the estate and objections to a debtor's discharge. 28 U.S.C. § 157(b)(2)(A) & (J). As recently noted, "[m]atters affecting the administration of the estate fall squarely within this Court's core jurisdiction." *Bethpage Fed. Credit Union v. Town of Huntington (In re Joe's*

*Friendly Serv. & Son*), 628 B.R. 181, 187 (E.D.N.Y. 2021) (citation omitted). It is undisputed, “[i]n core proceedings, the bankruptcy court has comprehensive power and may enter appropriate orders and judgments.” *Luan Inv. S.E. v Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 228 (2d Cir. 2002).

Endurance’s Motion to Reconsider asked this Court to reexamine the issuance of the Debtor’s discharge. Reconsideration of the Discharge Order concerns both the administration of the estate as well as the propriety of the discharge. Thus, the matter is a “core” proceeding and this Court has subject matter jurisdiction over the Motion to Reconsider.

## **II. The Ripeness of the Motion to Reconsider.**

For a matter “[t]o be justiciable, a cause of action must be ripe – it must present ‘a real, substantial controversy, not a mere hypothetical question.’” *Nat’l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2d Cir. 2013) (quoting *AMSAT Cable Ltd. v. Cablevision of Conn.*, 6 F.3d 867, 872 (2d Cir. 1993)). “‘Ripeness’ is a term that has been used to describe two overlapping threshold criteria for the exercise of a federal court’s jurisdiction.” *Simmonds v. INS*, 326 F.3d 351, 356-57 (2d Cir. 2003); accord *Kirschenbaum v. Fed. Ins. Co. (In re EMS Fin. Servs., LLC)*, No 12-71324, 2013 Bankr. LEXIS 139, at \*13-14 (Bankr. E.D.N.Y. Jan. 4, 2013). “Both are concerned with whether a case has been brought prematurely, but they protect against prematurity in different ways and for different reasons.” *Id.* at 357. “The first such requirement – which we refer to as ‘constitutional ripeness’ – is drawn from Article III limitations on judicial power.” *In re Methyl Tertiary Butyl Ether (“MTBE”) Prods. Liab. Litig.*, 725 F.3d 65, 109 (2d Cir. 2013) (citing *Simmonds*, 326 F.3d at 357). “The second such requirement – which we refer to as ‘prudential ripeness’ – is drawn from prudential reasons for refusing to exercise jurisdiction.” *Id.* at 110 (citations omitted).

### **A. Constitutional Ripeness.**

Constitutional ripeness “has as its source the Case or Controversy Clause of Article III of the Constitution, and hence goes, in a fundamental way, to the existence of jurisdiction.”

*Simmonds*, 326 F.3d at 357. “Constitutional ripeness ‘is a specific application of the actual injury aspect of Article III standing.’” *TNB USA Inc. v. FRB of N.Y.*, No. 18-cv-7978, 2020 U.S. Dist. LEXIS 62676, at \*25 (S.D.N.Y. Mar. 25, 2020) (citation omitted). It is irrefutable, “[f]ederal courts are without power to decide questions that cannot affect the rights of *litigants in the case before them*.” *Elliott v. GM LLC (In re Motors Liquidation Co.)*, 829 F.3d 135, 168 (2d Cir. 2016) (emphasis in original) (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)). Stated differently, “courts may not give ‘an opinion advising what the law would be upon a hypothetical state of facts,’ . . . .” *Id.* (citations omitted).

Here, the Motion to Reconsider was constitutionally ripe because the Debtor’s discharge had been issued and Endurance timely moved for reconsideration. Endurance’s request was not tangentially related to the Debtor’s discharge, it directly aimed to vacate or defer the entry of the Discharge Order. The issuance of the Discharge Order was not hypothetical; the Debtor’s discharge was entered and has all effects as described in § 524 of the Bankruptcy Code.

“When a debtor is granted a discharge in bankruptcy, the ‘injury’ to a creditor holding a dischargeable claim is that it is barred from seeking payment of that indebtedness from the debtor.” *Brown v. Brown (In re Brown)*, No. 18-10617, 2018 Bankr. LEXIS 2911, at \*12 (Bankr. S.D.N.Y. 2018) (citing 11 U.S.C. § 524(a)(2)). Conversely, if the Debtor’s discharge is vacated, deferred or otherwise manipulated, then the Debtor would be “injured” as his discharge would be in jeopardy. Hence, the Motion to Reconsider was constitutionally ripe for a judicial

determination as it manifested a live controversy affecting the legal rights of DiStefano and Endurance.

**B. Prudential Ripeness.**

“Prudential ripeness, on the other hand, is a discretionary tool. A case may be prudentially unripe, but that ‘does not mean that the case is not a real or concrete dispute affecting cognizable current concerns of the parties within the meaning of Article III.’” *TNB USA Inc.*, 2020 U.S. Dist. LEXIS 62676, at \*25 (quoting *Simmonds*, 326 F.3d at 357). “Whereas constitutional ripeness informs whether a court *can* decide a case before it, prudential ripeness allows courts to determine whether a case would ‘be *better* decided later and that the parties will not have constitutional rights undermined by the delay.’” *Id.* (emphases in original) (citation omitted).

The Second Circuit test to determine if a matter is prudentially ripe involves two inquiries:

“(1) whether an issue is fit for judicial decision and (2) whether and to what extent the parties will endure hardship if decision is withheld.” The focus of these two questions is whether the appellant’s claims would be better heard now or at some future point. Fitness “is concerned with whether the issues sought to be adjudicated are contingent on future events or may never occur.” “Issues have been deemed ripe when they would not benefit from any further factual development and when the court would be in no better position to adjudicate the issues in the future than it is now.” Hardship, in turn, involves an evaluation of “whether the challenged action creates a direct and immediate dilemma for the parties.” *Am. Sav. Bank, FSB v. UBS Fin. Servs.*, 347 F.3d 436, 440 (2d. Cir. 2003) (internal citations omitted).

Applying this standard to the facts of this case leads to the conclusion that the Motion to Reconsider was ripe for adjudication. First, the matter was fit for a judicial decision because the Debtor’s discharge had been issued. This Court focused solely on whether Endurance provided sufficient legal authority to defer, delay or vacate the issued discharge: Endurance did not.

Next, the Creditor would endure a hardship if the Motion to Reconsider had not been heard when it was filed as the Discharge Order created an immediate dilemma for Endurance.

The Creditor correctly asserts if the Motion to Reconsider had not been filed, then the Discharge Order would be a final and non-appealable order. *See Espinosa v. United States Aid Funds*, 553 F.3d 1193, 1199 (9th Cir. 2008), *aff'd*, 559 U.S. 260 (2010) (“A bankruptcy discharge order is a final judgment . . .”). The inability to appeal the Discharge Order would be a significant hardship for Endurance. Finally, the issue was ripe because no further factual development was needed. There were no facts in dispute or in development as the discharge had been issued.

### **CONCLUSION**

In sum, for all the reasons stated, this Court had subject matter jurisdiction over the Discharge Order and the Motion to Reconsider. Since the matter was both constitutionally and prudentially ripe, it was the proper time for a judicial determination.

Dated: May 25, 2022  
Albany, New York

/s/ Robert E. Littlefield, Jr.  
Robert E. Littlefield, Jr.  
United States Bankruptcy Judge