


Dated: March 14, 2016
The following is ORDERED:




Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
GREGORY DON SHAW, JR.,
Debtor.

Case No. 13-22513-L
Chapter 7

GREGORY DON SHAW, JR.,
Plaintiff,
v.
DIXIE RENTS, INC.,
MARCUS DORRIS, and
DARRYL HUMPHREY,
Defendants.

Adv. Proc. No. 15-00209

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT is a motion for summary judgment filed February 2, 2016, by the Defendant, Dixie Rents, Inc. ("Dixie Rents"). The Plaintiff, Gregory Don Shaw, Jr., filed his response on March 3, 2016. In this proceeding, with respect to Dixie Rents, the Plaintiff seeks a declaration that a settlement agreement executed by Defendant Darryl Humphrey on his behalf was

unauthorized. Further, the Plaintiff seeks a declaration that any obligation arising out of his lease with Dixie Rents was discharged in bankruptcy. Dixie Rents filed an Answer and Counter-Complaint on July 7, 2015, to which the Plaintiff filed his Answer on September 3, 2015. Dixie Rents asserts that a judgment it obtained against the Plaintiff on June 5, 2014, in the amount of \$131,316, was not discharged in bankruptcy because it relates to obligations that arose after the filing of the Plaintiff's bankruptcy petition. In support of its motion, Dixie Rents relies upon the record in the Plaintiff's bankruptcy case, and the pleadings filed in this adversary proceeding.

The individual defendants were added as parties when the Plaintiff filed his Second Amended Adversary Complaint on December 4, 2015. Although summonses were issued by the court on December 8, 2015, the docket does not reflect that they were returned. The individual defendants are not personally before the court. No relief is sought by Dixie Rents from the individual defendants.

JURISDICTION

Original but not exclusive jurisdiction over civil proceedings arising under title 11 of the United States Code (i.e., the "Bankruptcy Code") lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all civil proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The determination of the discharge of a particular debt is a question arising under title 11 of the United States Code and is a core bankruptcy proceeding. *See* 28 U.S.C. § 157(b)(2)(I). The bankruptcy court has authority to enter an order determining whether

the debt allegedly owed by the Plaintiff to Dixie Rents was discharged in bankruptcy subject only to appellate review. 28 U.S.C. § 157(b)(1).

SUMMARY JUDGMENT STANDARD

A motion for summary judgment may be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), incorporated at Fed. R. Bankr. P. 7056. “Summary judgment is proper if the evidence, taken in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.” *Pazdzierz v. First American Title Ins. Co. (In re Pazdzierz)*, 718 F.3d 582, 586 (6th Cir. 2013), quoting *Mazur v. Young*, 507 F.3d 1013, 1016 (6th Cir. 2007). The Court of Appeals for the Sixth Circuit has described the standards for granting summary judgment as follows:

A genuine issue of material fact exists when, “there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In deciding whether this burden has been met by the movant, this court views the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). However, to survive summary judgment, the plaintiff must present affirmative evidence sufficient to show a genuine issue for trial. *Anderson*, 477 U.S. at 249, 106 S. Ct. 2505. Therefore, “[i]f evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 249-50, 106 S. Ct. 2505.

White v. Wyndham Vacation Ownership, Inc., 617 F.3d 472, 475-76 (6th Cir. 2010).

UNDISPUTED FACTS

The following facts are not in dispute.

1. The Plaintiff entered into a lease with Dixie Rents for property known as 6920 Winchester, Suites 102 and 103, Memphis, Tennessee, for a term of five years commencing February 1, 2008, and ending January 31, 2013 (the “Lease”).
2. The term of Lease was subsequently extended to January 31, 2014, pursuant to a Lease Modification Agreement dated September 20, 2010.
3. The Plaintiff filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on March 7, 2013.
4. Dixie Rents was not listed as a creditor in any of the schedules filed by the Plaintiff.
5. Norman P. Hagemeyer was appointed trustee in bankruptcy on March 7, 2013.
6. Dixie Rents did not file a proof of claim against the bankruptcy.
7. The Plaintiff was granted a discharge pursuant to 11 U.S.C. § 727 on June 17, 2013.
8. No non-exempt assets were available for distribution in the bankruptcy case.
9. The Lease was not assumed during the course of the bankruptcy case.
10. The Final Decree was entered June 20, 2013, and the bankruptcy case was administratively closed.
10. Unaware of the bankruptcy case, Dixie Rents filed a complaint in the appropriate state court against the Plaintiff on August 13, 2013, for possession and rent arrearage.
11. Judgment was taken by default against the Plaintiff in the amount of \$24,000.
12. A motion to set aside the default judgment was filed on behalf of the Plaintiff supported by his affidavit, which was granted.
13. Judgment was subsequently entered in favor of Dixie Rents against the Plaintiff on June 5, 2014, in the amount of \$131,316.

14. The Plaintiff filed a motion to reopen his bankruptcy case on April 8, 2015, which was granted on April 14, 2015.
15. The Plaintiff filed an amended Schedule G reflecting the existence of the Lease on April 24, 2015.
16. Dixie Rents filed a “Motion for Declaratory Judgment” in the bankruptcy case on June 22, 2015.
16. The Plaintiff commenced this adversary proceeding by filing a complaint on June 23, 2015.
17. Leave was granted to amend the complaint to add additional parties, and an amended complaint was filed December 4, 2015.

CONCLUSIONS OF LAW

A discharge under Chapter 7 of the Bankruptcy Code “discharges the debtor from all debts that arose before date of the order for relief under [Chapter 7]...whether or not a proof of claim based upon any such debt or liability is filed under section 501 of [title 11] and whether or not a claim based on any such debt or liability is allowed under section 502.” 11 U.S.C. § 727(b). In a no-asset Chapter 7 case, the failure of a debtor to list an otherwise dischargeable debt has no effect upon the nature of the debt or the debtor’s entitlement to discharge of the debt. *Zirnhelt v. Madaj (In re Madaj)*, 149 F.3d 467, 470 (6th Cir. 1998). This is so because there is no date by which a proof of claim must be filed to be “timely” for purposes of section 523(a)(3)(A) of the Bankruptcy Code, which provides for the treatment of claims of creditors who do not receive notice of the filing of a bankruptcy petition.

Had Dixie Rents been given notice of the filing of the Plaintiff’s bankruptcy petition, it would also have received notice that there were no assets available for distribution, and it would

have been instructed not to file a proof of claim until such time, if ever, that non-exempt assets were discovered. Notwithstanding its failure to file a proof of claim, its claim would have been discharged as the result of section 727(b). Pursuant to the holding in *Madaj*, the result is the same even though Dixie Rents did not learn of the filing of the Plaintiff's bankruptcy petition until after the discharge was entered. All prepetition debts of the Plaintiff were discharged on June 17, 2013.

Dixie Rents asserts that the debt that it seeks to collect from the Plaintiff is not a prepetition debt, but is a postpetition debt. Thus, it says, its debt was not discharged. It asserts this because its suit was for "post-filing rent." Dixie Rents is mistaken.

Section 365(a) of the Bankruptcy Code permits a trustee in bankruptcy to assume or reject an unexpired lease of the debtor subject to the court's approval. Section 365(d)(4)(A) provides a period of 120 days after the date of the order for relief for a trustee in bankruptcy to assume or reject an unexpired lease of nonresidential real property. Thereafter, an unexpired lease of nonresidential real property is deemed rejected, and the trustee is directed to surrender the property to the lessor. 11 U.S.C. § 365(d)(4)(A). Prior to assumption or rejection, the trustee in bankruptcy is directed to timely perform all obligations of the debtor under the lease. 11 U.S.C. § 365(d)(3). The obligation of the trustee to perform under an unexpired lease during the postpetition, prerejection period is treated as an expense of administration of the bankruptcy estate. *See, e.g., Koenig Sporting Goods, Inc. v. Morse Road Co. (In re Koenig Sporting Goods, Inc.)*, 203 F.3d. 986 (6th Cir. 2000) (Chapter 11 case); *In re Oreck Corp.*, 506 B.R. 500, 506 (Bankr. M.D. Tenn. 2014) (Chapter 11 case); *In re Pyxsys Corp.*, 288 B.R. 309 (Bankr. D. Mass. 2003) (Chapter 7 case). Upon the rejection of an unexpired lease, the lessor is entitled to a claim calculated pursuant to section 502(b)(6) of the Bankruptcy Code. In general, that section provides for a claim equal to the greater

of the rent reserved by the lease for one year, or 15%, not to exceed three years, of the remaining term of the lease. A claim arising from the rejection of an unexpired lease is treated as if it had arisen before the date of the filing of the petition. 11 U.S.C. § 502(g)(1).

Just as Dixie Rents was unaware of the bankruptcy filing, the trustee in bankruptcy, Mr. Hagemeyer, was unaware of the Lease. As a result, he took no action with respect to the Lease. By operation of law, the Lease was deemed rejected on the 120th day after the order for relief, which was July 5, 2013. 11 U.S.C. § 365(d). At that point, Dixie Rents became entitled to a prepetition claim calculated as provided in section 502(b)(6). This claim, like all other prepetition obligations of the Plaintiff, was discharged pursuant to section 727(b). As the result of the discharge, the Plaintiff has no personal obligation to pay the prepetition claim of Dixie Rents. 11 U.S.C. § 727(b). Dixie Rents' prepetition claim is a claim against the bankruptcy estate, which, unfortunately in this case, has no assets. Dixie Rents also is entitled to a postpetition, prerejection administrative claim against the bankruptcy estate. While not discharged, this claim never was the personal obligation of the Plaintiff. Unfortunately again, there are no funds in the bankruptcy estate from which this claim can be paid.

The record is not clear about the Plaintiff's use of the leased premises after the filing of his bankruptcy petition. As stated previously, Dixie Rents has provided no other basis for the judgment it received other than the Lease. As a result of the rejection of the Lease, if the Plaintiff continued to use and occupy the premises of Dixie Rents, he did so as a holdover tenant. The implications of this status were not raised by either of the parties.

CONCLUSION

Dixie Rents' Motion for Summary Judgment must be denied because it has not shown that it is entitled to the declaration it seeks as a matter of law. Either the judgment it received in state court arose out of the Lease and was discharged as the result of the rejection of the Lease by operation of law, or it arose out of some other facts not presented to this bankruptcy court. Accordingly, the motion is **DENIED**.

cc: Debtor/Plaintiff
Attorney for Debtor/Plaintiff
Defendants
Attorneys for Defendants
Chapter 7 Trustee