

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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**IN RE**

**CHARLOTTE GILES,**  
  
**Debtors.**

**Case No. 96-10457**  
  
**Chapter 7**

**CHARLOTTE GILES,**  
  
**Plaintiff,**

**v.**

**Adv. Pro. No. 00-5082**

**BANCORP SOUTH,**  
  
**Defendant.**

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**MEMORANDUM OPINION AND ORDER RE  
COMPLAINT FILED BY DEBTOR FOR CONTEMPT OF COURT AGAINST  
BANCORP SOUTH FOR TRYING TO COLLECT DEBT AFTER DISCHARGE**

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The Court conducted a trial in this matter on June 19, 2000, pursuant to FED. R. BANK. P. 7001. This is a core proceeding. 28 U.S.C. § 157(b)(2). The following shall serve as this Court's findings of facts and conclusions of law pursuant to FED. R. BANKR. P. 7052.

**I. FINDINGS OF FACT**

The facts in this case are rather simple and undisputed. On May 1, 1995, Charlotte Giles, ("Giles"), and her daughter, Erica Newsome, executed a note with Bancorp South<sup>1</sup> in the amount

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<sup>1</sup>At the time of executing all of the notes at issue in this proceeding, Bancorp South was known as "Volunteer Bank." For purposes of this opinion, the Court will refer to the lender as "Bancorp South."

of \$2,385.36. On November 21, 1995, Giles executed a second note with Bancorp South in the amount of \$3,633.07. Giles' daughter did not co-sign this second loan.

Giles filed a Chapter 7 petition for bankruptcy relief on February 14, 1996. Both of the notes Giles had previously executed with Bancorp South were listed on her petition. Bancorp South received all the appropriate notices in Giles' case. Giles received a Chapter 7 discharge of her debts on June 5, 1996.

Two months after receiving her bankruptcy discharge, Giles was contacted by Kevin Allen, a loan officer at Bancorp South, and informed that if she did not renew the May 1<sup>st</sup> and November 21<sup>st</sup> notes, he would lose his job. Based upon this assertion, Giles executed another note with Bancorp South on August 19, 1996, which consolidated the May 1<sup>st</sup> and November 21<sup>st</sup> notes and removed Erica Newsome as co-signer on the May 1<sup>st</sup> note. Giles did not borrow any additional monies under this “new” note. Giles made some of the payments on this note pursuant to its terms and conditions.

On April 25, 1997, Giles renewed the August 19<sup>th</sup> note. She eventually defaulted under this last note and, as a result, Bancorp South filed a warrant in the General Sessions Court of Madison County attempting to enforce and collect upon the April 25<sup>th</sup> note as executed by Giles.

On January 24, 2000, Giles filed a “Motion to Reopen” her chapter 7 case for the purposes of filing a contempt petition against Bancorp South for their collection efforts. The

Court granted Giles’ “Motion to Reopen” in open court on February 17, 2000. Giles filed the instant contempt proceeding against Bancorp South on February 29, 2000.

Bancorp South filed an answer to Giles’ complaint on March 31, 2000. In their answer, Bancorp South alleges that the renewals of Giles’ pre-bankruptcy loans were not a violation of the § 524 permanent injunction for two reasons. First, Bancorp South alleges that Giles contacted her loan officer during the pendency of her bankruptcy and expressed a desire to voluntarily repay the loans. Secondly, Bancorp South alleges that the removal of Erica Newsome’s name from the May 1, 1995, loan was adequate consideration for the new post-discharge notes. Bancorp South included a counterclaim against Giles in their answer in which they requested that this Court grant them a judgment for the amount of the loans plus interest.

## **II. CONCLUSIONS OF LAW**

Section 524(a) of the Bankruptcy Code provides:

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

. . .

(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;

11 U.S.C. § 524(a)(2). “The purpose of the permanent injunction set forth in § 524 and reiterated in the discharge order is to effectuate one of the primary purposes of the Bankruptcy Code, to afford the debtor a financial fresh start.” *Cherry v. Ardendall (In re Cherry)*, 247 B.R. 176, 182 (Bankr. E.D. Va. 2000).

Section § 524 allows a debtor to reaffirm an otherwise dischargeable debt, but only if there is strict compliance with § 524(c) and (d). *Republic Bank v. Getzoff (In re Getzoff)*, 180 B.R. 572, 573 (Bankr. 9<sup>th</sup> Cir. 1995). Said subsections require that:

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if--

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title;

(2)(A) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim; and

(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that--

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and

(C) the attorney fully advised the debtor of the legal effect and consequences of--

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as--

- (i) not imposing an undue hardship on the debtor or a dependent of the debtor; and
- (ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of negotiating such agreement, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall--

(1) inform the debtor--

(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of--

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement; and

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

11 U.S.C. § 524(c)(1) and (3). Because no such agreement was filed in this case and none of the other requirements were met, § 524(c) and (d) have no applicability in the matter at bar.

Another subsection which allows for the reinstatement of an otherwise dischargeable obligation is § 524(f) which provides that “[n]othing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.” 11 U.S.C. § 524(f). It is important to note, however, that “[t]he provisions of § 524(f) do not validate repayments of discharged debts that are in any manner induced by the acts of the creditor.” *Mickens v. Waynesboro Dupont Employees Credit Union, Inc., et al.*, (In re *Mickens*), 229 B.R. 114, 118 (Bankr. W.D.Va. 1999) (citing *Van Meter v. American State Bank*, 89 B.R. 32, 34 (W.D. Ark. 1988)). Additionally, “[n]o transaction that leaves a debtor obligated to pay, or believing that he or she is obligated to pay any part of a discharged debt can be characterized as voluntary repayment within the meaning of section 524(f).” *In re Bowling*, 116 B.R. 659, 664 (Bankr. S.D. Ind. 1990). As the *Getzoff* court observed, “[c]learly, allowing a debtor to sign a note which places him under the same obligation which he was subject to pre-discharge does not constitute a

voluntary repayment by the debtor nor does it leave the debtor in a position to make a voluntary repayment under § 524(f).” *Getzoff*, 180 B.R. at 574.

Despite this reluctance to enforce § 524(f) post-discharge agreements to repay discharged debts, a great number of courts have found such agreements binding when new consideration is exchanged between the parties at the time of executing the agreements. *Watson v. Shandell (In re Watson)*, 192 B.R. 739, 747 (Bankr. 9<sup>th</sup> Cir. 1996), *aff’d*, 116 F.3d 488, 1997 WL 330895 (9<sup>th</sup> Cir. 1997) (unpublished table decision); *In re Peterson*, 110 B.R. 946, 950 (Bankr. D. Colo. 1990); *Antonino v. Kenny (In re Antonino)*, 241 B.R. 883, 888 (Bankr. N.D.Ill. 1999); *Bryer v. Hetrick (In re Bryer)*, 216 B.R. 755, 759 (Bankr. E.D. Pa. 1998); *Minster State Bank v. Heirholzer (In re Heirholzer)*, 170 B.R. 938, 941 (Bankr. N.D.Ohio 1994). Although a bankruptcy discharge releases the debtor from personal liability for a debt, it has no effect on the co-signer’s liability for the debt. 11 U.S.C. § 524(e).

In the case at bar, the Court is tempted to find that because it was the debtor’s testimony that Bancorp South coerced her into renewing the loans after they had already been discharged none of the post-discharge obligations are enforceable; however, due to the fact that partial consideration was exchanged between the parties, the Court holds that a portion of the post-discharge renewals is valid. When Giles renewed the May 1, 1995, and the November 21, 1995, promissory notes on June 5, 1996, the co-signer, Erica Newsome, was removed from the May 1, 1995, note, thereby alleviating her liability for the debt. As a result of this removal, the Court

finds that Giles is obligated to repay Bancorp South for the note executed on May 1, 1995. The total amount of payments Giles is obligated to pay Bancorp South under this note is the amount owing at the time of her bankruptcy, plus any interest that has accrued since filing. Because no consideration was exchanged when renewing the November 21, 1995, note, all of the post-discharge renewals of that note are void and unenforceable. Any money Giles has paid Bancorp South in excess of the above is to be refunded to her.

As a result of the Court’s finding that Bancorp South coerced debtor to renew an obligation which had been discharged by her bankruptcy, the Court finds Bancorp South in contempt. “It has long been recognized and it is elementary that a willful and knowing violation of a valid order of a Court which has jurisdiction of the subject matter is civil contempt. . .” *In re Exposito*, 119 B.R. 305, 307 (Bankr. M.D. Fla. 1990). “For civil contempt, the debtor is entitled to be compensated for all expenses, including attorney’s fees, ‘incurred in finally securing the benefit of his discharge.’” *Mickens*, 229 B.R. at 118 (citing *In re Latanowich*, 207 B.R. 326, 337 (Bankr. D.Mass. 1997)). In the case at bar, Giles is entitled to be compensated by Bancorp South for her attorney fees incurred in litigating this matter.

**ORDER**

It is therefore **ORDERED** that the Debtor’s Complaint for Contempt of Court Against Bancorp South for Trying to Collect Debt After Discharge is **GRANTED AS FOLLOWS**:

- 1. The Debtor, Charlotte Giles, is hereby liable for the loan executed on May 1, 1995.**
- 2. Any payments made by Charlotte Giles to Bancorp South after June 5, 1996, in excess of the above stated liability are to be refunded to her by Bancorp South.**
- 3. Bancorp South is reimburse Charlotte Giles for any and all attorney fees she has incurred in litigating this action. Charlotte Giles’ attorney is to submit an appropriate application for these fees to this Court within thirty days from entry of this order.**

**IT IS SO ORDERED.**

**By the Court,**

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**G. Harvey Boswell  
United States Bankruptcy Judge**

**Date: August 1, 2000**