UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

O. B. BUCKNER, Case No. 94-32542-K

Debtor. Chapter 7

ORDER RE MOVANTS' MOTION TO REOPEN CLOSED CASE AND DEBTOR'S RESPONSE THERETO COMBINED WITH NOTICE OF THE ENTRY THEREOF

These core proceedings are before the Bankruptcy Court upon (1) the motion of the movants, Lewis and Louise Harris ("Movants"), seeking to reopen this closed case and (2) the opposition thereto filed by the Respondent, O. B. Buckner, the above-named chapter 7 debtor ("Debtor").

By virtue of 28 U.S.C. § 157(b)(2)(A), (I) and (O), these are core proceedings.

On March 14, 1997, the court made an oral bench ruling (i.e., oral findings of fact and conclusions of law) in accordance with FED. R. BANKR. P. 7052. Unfortunately, counsel for the parties have been unable to agree on the language of the order. Accordingly, this Order follows and further supplements the prior bench ruling.

The relevant background facts are not in substantial dispute and may be briefly summarized as follows: Prior to the commencement of this chapter 7 bankruptcy case, the movants sued the debtor and Johnny M. Price in the Honorable Shelby County, Tennessee, Circuit Court, being Docket No. 53237 T.D. 9, for injuries and damages that they allegedly suffered as a result of an automobile collision. At the time of the collision, the debtor had a liability policy of insurance in effect. While this State Court lawsuit was pending, on December 6, 1994, the debtor filed an original no-asset petition under chapter 7 of the Bankruptcy Code.

The filing of the debtor's bankruptcy case triggered the automatic stay provisions set forth in 11 U.S.C. § 362(a). Thereafter, the movants obtained relief from the automatic stay under 11 U.S.C. § 362(d)(1) to allow them to "go forward" with the pending personal injury action. In essence, the movants

were authorized by the Bankruptcy Court to proceed to litigate to finality in the State Court action; however, it is noted that the issue of the dischargeability of the underlying claim is a separate and distinct matter governed by 11 U.S.C. § 523(a). Movants opted not to file a nondischargeability complaint in the Bankruptcy Court under 11 U.S.C. § 523(a)(6) or (9) seeking to have their particular debt excepted from the debtor's general discharge. Accordingly, the debtor's discharge was granted pursuant to FED. R. BANKR. P. 4004(c); and the chapter 7 case was closed under 11 U.S.C. § 350(b).

Subsequently, the movants filed the instant motion seeking to reopen this chapter 7 case seeking a "clarification" regarding matters involving the debtor's discharge and the pending State Court lawsuit. The debtor opposes the reopening of the closed case.

A bankruptcy discharge order under 11 U.S.C. § 524(a) has the practical effect of relieving the debtor of almost all of the debtor's liabilities, thus allowing the debtor's "fresh start" to begin. Once the discharge is granted, the automatic stay that was originally triggered under 11 U.S.C. § 362(a) upon the commencement of the bankruptcy case is statutorily dissolved by virtue of 11 U.S.C. § 362(c)(2)(C). The automatic stay ordinarily is superseded by a permanent injunction under 11 U.S.C. § 524(a). The Bankruptcy Code is very specific with respect to the effect of the discharge on discharged debts. A bankruptcy discharge normally operates as an injunction against the enforcement of any discharged debt, including the continuation of, for example, legal process. 11 U.S.C. § 524(a)(1).

The Bankruptcy Reform Act of 1978 continues the policy of the former Bankruptcy Act of 1898 with respect to third parties who are not discharged in bankruptcy. See section 16 of the former Bankruptcy Act. With limited exception not applicable here, the debtor's discharge under the Bankruptcy Reform Act of 1978 does not affect the liability (or property) of any other entity. 11 U.S.C. § 524(e). For example, a debtor's liability insurer is not, ipso facto, protected by a bankruptcy discharge. The discharge is personal to the debtor. See, for example and among others, *In re Grove*, 100 B.R. 417 (Bankr. C.D. Ill. 1989); *In re Gibson*, 172 B.R. 47 (Bankr. W.D. Ark. 1994); and *In re Papas*, 19 B.C.D. 1501 (D. Wyom. 1989). Moreover, it is now well settled that the section 524(a)(2) bankruptcy discharge injunction does not

bar a claimant's suit against the debtor solely to determine liability in order to later seek to collect from the debtor's insurer. See, for example, *In re Gibson*, supra.

The propriety of permitting such an action to proceed against the debtor to ultimately allow the claimant to collect from the debtor's insurer seems to accord with the social policy underlying automobile insurance itself. It would not be in accordance with sound public policy to deem a debtor's discharge in bankruptcy as releasing an insurance company from liability under a policy which the law requires every automobile driver to carry for the protection of the public. See *In re Trayler*, 94 B.R. 292, 293 (Bankr. E.D.N.Y. 1989).

Based on the foregoing, the Court finds and concludes, considering a totality of the particular facts and circumstances and applicable law, that the movants are not barred from continuing to prosecute to finality the pending personal injury action against the debtor, post- discharge, in order to allow the movants an opportunity to seek ultimate insurance recovery against the debtor's insurer. It should be emphasized that the debtor's fresh financial start will not be affected because the movants cannot seek to enforce or impose any in personam liability against the debtor here. It is expressly noted that the debtor's pre- and postdischarge time is not an asset under 11 U.S.C. § 541(a) protected by the automatic stay or permanent discharge injunction. See, for example, *In re Papas*, 19 B.C.D. 1501 (D. Wyom. 1989), and that the debtor's insurer ordinarily is obligated to pay for the costs of defending the suit, because only it can be liable after the debtor's discharge in bankruptcy. See, for example, *In re Jet Florida Systems, Inc.*, 19 B.C.D. 1364 (11th Cir. 1989).

It also is well settled that a judicial decision whether or not to reopen a closed bankruptcy case rests in the sound discretion of the bankruptcy court. See, for example, *In re Case*, 937 F.2d 1014, 1018 (5th Cir. 1991); *In re Rosinski*, 759 F.2d 539, 540 (6th Cir. 1985). Under a totality of the circumstances and applicable law, a reopening of this closed case is unnecessary to accomplish this Court's findings and conclusions articulated above. Simply put, pursuant to 11 U.S.C. § 524(e), a plaintiff-creditor, such as the movants here, may proceed against the debtor under these facts to ultimately seek to establish liability as a precondition or prerequisite to recover from a third party (e.g., an insurer), who also may be liable. The

failure of the movants, as plaintiff-creditors, to file a proof of claim in this no-asset case or a nondischargeability complaint against the debtor does not alter or change this result. An insurance company should not be allowed to gain a benefit which was not intended.

All other matters impacting the pending State Court litigation are expressly reserved for the Honorable State Court. That is, this Court, recognizing the doctrine of comity and based on respect for State law, abstains regarding other such matters sua sponte. 28 U.S.C. § 1334(c)(1); see also *Bellotti v. Baird*, 428 U.S. 132, 143, n. 10 (1976); *Scherer v. Carroll*, 150 B.R. 546, 552 (D. Vt. 1993).

IT IS SO ORDERED:

BY THE COURT

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DAVID S. KENNEDY
CHIEF UNITED STATES BANKRUPTCY JUDGE

DATE: May 6, 1997

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