

This opinion is not intended for publication.



Dated: May 02, 2007
The following is SO ORDERED.


G. Harvey Boswell
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re:

HARLON PATRICK HRYHORCHUK,
debtor.

CASE NO. 97-10601

Chapter 13

HARLON PATRICK HRYHORCHUK,
plaintiff

v.

Adv. Pro. No. 06-5242

OHIO CASUALTY INSURANCE
defendants.

MEMORANDUM OPINION AND ORDER RE: COMPLAINT FILED BY DEBTOR
SEEKING CONTEMPT ACTION AGAINST OHIO CASUALTY INSURANCE

At issue in this case is a 1997 non-dischargeability judgment that was entered against the debtor in favor of Ohio Casualty Insurance in the debtor's previous chapter 7 case. The memorandum opinion and order awarding the non-dischargeable judgment of \$348,938.84 states that judgment "shall not be dischargeable by [Harlon Patrick Hryhorchuk] in this or any subsequent bankruptcy case filed by him." Based on this language, Ohio Casualty asserts that the debtor's chapter 13 discharge in the current case did not discharge the judgment. The debtor argues that, although the memorandum opinion and order stated that

it would not be dischargeable in any subsequent case, there was no statutory basis for that language and, as such, the debt was discharged in this case.

Relying on the language of the 1997 order, Ohio Casualty attempted to collect the remaining amount due on their debt after the debtor's chapter 13 discharge. The debtor filed the instant adversary proceeding alleging that in so doing Ohio was in contempt of court. The Court conducted a hearing on the plaintiff's complaint for contempt on March 14, 2007. FED. R. BANKR. P. 7001. Resolution of this matter is a core proceeding. 28 U.S.C. § 157(b)(2). This Memorandum Opinion and Order shall serve as the Court's findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

The facts in this case are not in dispute. The debtor, Harlon Patrick Hryhorchuk, ("Hryhorchuk" or "debtor"), filed a chapter 11 petition on October 25, 1994, case number 94-12227. The debtor's case was converted to chapter 7 on May 10, 1995. On August 25, 1995, Ohio Casualty Insurance, ("Ohio"), filed a complaint to determine dischargeability pursuant to 11 U.S.C. § 523(a)(2), (4) and (6) based on the debtor's alleged misappropriation of funds held by him in a fiduciary capacity for the benefit of his minor daughters. Judge Latta of the Bankruptcy Court for the Western District of Tennessee granted Ohio's complaint on August 4, 1997, and awarded Ohio a non-dischargeable judgment under 11 U.S.C. § 523(a)(4). The exact language of the order states that:

Judgement shall be entered in favor of the plaintiff against the defendant Hryhorchuk in the amount of \$348,938.84 *which shall not be dischargeable by the defendant in this or any subsequent bankruptcy case filed by him.*

Hryhorchuk's chapter 7 case was discharged on September 20, 2000.

While his chapter 7 case was still pending, Hryhorchuk filed a chapter 13 petition with the Court. That case, case number 97-10601, was filed on February 21, 1997. Because the adversary proceeding filed by Ohio was still pending in his chapter 7 case, Hryhorchuk listed the Ohio's debt as contingent on his chapter 13 petition. Ohio filed an unsecured claim in the chapter 13 case in the amount of \$348,938.84. Ohio did not object to confirmation and the debtor's chapter 13 plan was confirmed on April 24, 1997. Because Hryhorchuk listed the debt as "contingent" on his petition, Ohio did not immediately receive disbursements under the plan.

Ohio filed a motion to modify the debtor's plan on June 6, 1997. In its motion, Ohio asked the court to modify the debtor's plan to provide for an estimated claim. The court granted Ohio's motion on August 27, 1997, and directed the trustee to disburse payments to Ohio "in accordance with the general disbursement and claims procedure of the Chapter 13 Trustee's office." On December 9, 1997, the court issued an order which set the percentage paid to unsecured creditors at 6%. Throughout the pendency of the chapter 13 case,

Ohio received a total of \$20,636.33 in disbursements from the Chapter 13 Trustee's office. Hryhorchuk's chapter 13 case was discharged and closed on March 1, 2002.

On August 9, 2007, the debtor filed a motion to reopen his chapter 13 for the purpose of enforcing his chapter 13 discharge against Ohio. According to the debtor's motion, Ohio was trying to collect the balance of its debt despite the chapter 13 discharge. The Court granted the debtor's motion on December 11, 2006, and the debtor filed his complaint for contempt on December 14, 2006.

At the trial in this matter, the debtor alleged that Ohio's debt was discharged in the chapter 13 case despite the language in the August 4, 1997, opinion. As support for this argument, the debtor relied on the language of the bankruptcy law that was in effect at the time his cases were filed.¹ Section 1328(a) of the pre-BAPCPA Bankruptcy Code provided that "the court shall grant the debtor a discharge of all debts provided for by the plan . . . except any debt . . . (2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title." 11 U.S.C. § 1328(a)(2) (1994). Because Judge Latta found Ohio's debt non-dischargeable under 11 U.S.C. § 523(a)(4), the debtor argued that the language in the 1997 opinion excluding the debt from discharge in that case or any subsequent filing had no statutory basis and was without effect in the chapter 13 case. Ohio argued that the language in the 1997 ruling is unambiguous and this Court must give it its plain meaning and find that the debt was not discharged in the debtor's chapter 13 case.

II. CONCLUSIONS OF LAW

As the debtor stated at the trial in this matter, § 1328(a) of the pre-BAPCPA Bankruptcy Code provided that a chapter 13 discharge discharged the debtor from all debts provided for in the plan or disallowed under § 502 except any debt—

- (1) provided for under section 1322(b)(5) of this title;
- (2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title; or
- (3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime.

11 U.S.C. § 1328(a)(1) - (3) (1994). This code section granted debtors what is commonly referred to as a "super discharge." *In re Solomon*, 67 F.3d 1128, 1134 (4th Cir. 1995). The chapter 13 discharge was much broader than that available to a debtor under chapter 7 of the Code and allowed a debtor to discharge debts that would be excluded from discharge under chapter 7. The broader chapter 13 discharge was given in exchange for the debtor devoting all of his disposable income to repayment of his debts for three to five years. *Hardin v. Caldwell (In re Caldwell)*, 895 F.2d 1123, 1126 (6th Cir. 1990).

¹Because the debtor's cases were filed prior to enactment of BAPCPA on October 17, 2005, the Court must look to the Bankruptcy Code which was in effect at the time the cases were filed.

When Congress amended the Bankruptcy Code in 2005, it vastly curtailed the extent of the chapter 13 “super discharge.” Now debts specified in § 523(a)(1)(B), (1)(C), (2), (3), (4), (5), (8), or (9), as well as “restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual” are excepted from discharge in chapter 13 cases. 11 U.S.C. § 1328(a) (2005).² Clearly, if Hryhorchuk’s chapter 13 case had been filed after October 17, 2005, Ohio’s judgment would be non-dischargeable in this case; however, as mentioned supra, both of Hryhorchuk’s cases were filed prior to enactment of BAPCPA and, as a result, the Court must look to the Bankruptcy Code that was in effect at the time Hryhorcuk’s cases were filed.

Looking to the Bankruptcy law in effect in 1994 and 1997, the Court finds that there was no statutory authority for excepting the debt at issue in this case from a subsequent chapter 13 filing when the August 4, 1997, judgment was issued. The debtor was entitled to file a chapter 13 case and seek dischargeability of all debts except those listed in 11 U.S.C. § 1328(a) (1994). Because the debt at issue in this case was one under 11 U.S.C. § 523(a)(4), the debt owing to Ohio was discharged when the Court issued Hryhorchuk his chapter 13 discharge on March 1, 2002. The Court will not find Ohio in contempt of court, however, for attempting to collect the debt after the chapter 13 discharge. Ohio reasonably relied on the language in the August 4, 1997, order which stated that the debt would be excepted from discharge in all subsequent bankruptcy filings.

ORDER

It is therefore **ORDERED** that the Debtor’s contempt complaint against Ohio Casualty Insurance is **DENIED** based on the fact that Ohio reasonably relied on the language in the August 4, 1997, order of non-dischargeability.

The Court **FURTHER ORDERS** that the debt owing to Ohio Casualty was discharged on March 1, 2002, when the debtor received his chapter 13 discharge in this case.

IT IS SO ORDERED.

Mailing Information:

Timothy Latimer, attorney for debtor

Samuel Barron, attorney for Ohio Casualty Insurance

Tim Ivy, Chapter 13 Trustee

²Debts provided for under § 1322(b)(5) or specified under § 507(a)(8)(C) as well as debts “for restitution, or a criminal fine, included in a sentence on the debtor’s conviction of a crime” are also excluded from a chapter 13 discharge under BAPCPA.