

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

Laura Ann Thomas,
Debtor.

Case No. 99-26506-L
Chapter 13

OPINION AND ORDER

This matter came before the Court upon “Felix H. Bean, III’s Motion For His Claim To Be Treated As An Administrative Expense to Receive 100% in This, The Debtor’s Chapter 13 Case” (“Motion”) filed on January 27, 2000. Based upon the following, this Court holds that Mr. Bean’s claim was discharged in the Debtor’s prior chapter 7 case and is not allowed in this case. This is a core proceeding. 11 U.S.C. § 157(b)(2)(B).

I.

Mr. Bean and Mr. Jimmy McElroy, the Debtor’s attorney, stipulated that the facts, as set forth in Mr. Bean’s motion, are accurate:

2. In Chapter 7 Case Number 98-24774-JDL, originally filed as Chapter 13, this Court, on September 11, 1998, entered **ORDER GRANTING MOTION TO PERMIT FORMER ATTORNEY TO WITHDRAW AND TO TREAT ATTORNEY FEES AS ADMINISTRATIVE EXPENSE**. The Court caused its **NOTICE OF ENTRY OF JUDGMENT** to be entered and served by mail on September 16, 1998. . . .

3. On April 21, 1999, Felix H. Bean, III caused a garnishment to issue from this Court and paid to the United States Marshall the sum of \$50.00. Subsequently, \$8.76 of the payment was returned to Felix H. Bean, III by the U.S. Marshall. Said garnishment was directed to garnishee Memphis Light Gas and Water Division, 220 South Main, Memphis, Tennessee.

4. That garnishment was served on Memphis, Light Gas and Water Division [sic] on May 11, 1999 at 10:57 a.m. On January 12, 2000, the United States Bankruptcy Court received the garnishee's answer which indicated it holds \$233.06 as a result of the garnishment. . . .

5. On January 13, 2000, Memphis Light Gas and Water Division caused a letter to be written to Felix H. Bean, III, who instituted the garnishment, advising that the Debtor had instituted new Chapter 13 proceedings. In this case Laura Ann Thomas, who has the same social security number as the person against whom the judgment was previously taken, filed another Chapter 13 case on June 2, 1999. That case was confirmed on July 20, 2000 with the percentage to be paid to unsecured creditors of apparently 2%.

6. Felix H. Bean, III is not listed as a creditor in the Petition and he did not receive notice of this Chapter 13 filing.

7. Nothing has been paid on the garnishment and the Debtor has not taken the trouble to inform your moving attorney that she has filed another Chapter 13 case.

Motion, Docket Entry #12. In his prayer for relief, Mr. Bean asks this Court to permit him to file a claim in the amount of \$991.24 and that this claim be treated as an administrative claim, receiving a distribution of 100%.

II.

At the hearing in this cause, Mr. McElroy argued that if the Debtor received a discharge in her prior chapter 7 case, then Mr. Bean's claim was extinguished. Mr. Bean concurred with Mr. McElroy, but questioned the Debtor's ability to file a chapter 13 case so quickly after receiving a discharge in her chapter 7 case. Neither Mr. McElroy nor Mr. Bean had proof of whether the Debtor in fact received a discharge in her prior case. As a result, the Court left open the proof for the parties to submit evidence regarding the discharge. Mr. McElroy subsequently provided the Court with a copy of the Full Case Summary from CHASER (Chambers Access to Selected Electronic Records)

in case number 98-24774, which indicates that the Debtor received a discharge in that case on December 15, 1998.

At the hearing, Mr. Bean expressed his concerns about the Debtor's ability to file a chapter 13 case on June 3, 1999, after receiving a discharge less than six months earlier. Section 727 of the Code provides in pertinent part:

(a) The court shall grant the debtor a discharge, unless –

* * *

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act in a case commenced within six years before the date of the filing of the petition.

11 U.S.C. § 727(a)(8). As a result, a debtor who receives a discharge under any of the sections noted in § 727(a)(8) is not eligible to be a debtor under chapter 7 again for six years. Section 1328,¹ the

¹ Section 1328 provides:

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, 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.

(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if –

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under section 1329 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt –

- (1) provided for under section 1322(b)(5) of this title; or
- (2) of a kind specified in section 523(a) of this title.

(d) Notwithstanding any other provision of this section, a discharge granted under this section does

corresponding discharge section in chapter 13, does not contain a similar prohibition. As a result, a debtor who receives a discharge under chapter 7 may file a case under chapter 13 at any time after receiving that discharge. The debts included in the chapter 13 may include any debts surviving the chapter 7 discharge or any debts incurred after the debtor filed her chapter 7 petition, subject to the provisions of title 11. While this may not seem fair or appropriate to Mr. Bean, the Court is not in a position to circumvent the apparent intentions of Congress.

III.

Based upon the foregoing, the Court holds that Mr. Bean's claim was discharged on December 15, 1998, in the Debtor's prior chapter 7 case and, therefore, is not an allowable claim in this chapter 13 case.

BY THE COURT,

JENNIE D. LATTA
United States Bankruptcy Judge

Date: _____

cc: Felix H. Bean, III
Debtor
Debtor's Attorney
Chapter 13 Trustee

not discharge the debtor from any debt based on an allowed claim filed under section 1305(a)(2) of this title if prior approval by the trustee of the debtor's incurring such debt was practicable and was not obtained.

(e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if –

- (1) such discharge was obtained by the debtor through fraud; and
- (2) the requesting party did not know of such fraud until after such discharge was granted.