

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)
)
THEODORE CARLTON RICHARDSON,) Case No. 94-00324
) (Chapter 7)
Debtor.)

DECISION RE GRANTING RELIEF FROM THE DISCHARGE INJUNCTION

The Motion for Relief From Discharge Injunction filed by Ron Peterson, successor trustee for the Jacqueline Overton Trust (Docket Entry No. 34) was heard on July 11, 2000. The undisputed facts are these. The United States Bankruptcy Court for the Middle District of Florida had pending a timely-filed adversary proceeding pending, Ron Peterson, as Trustee of the Jacqueline Overton Trust v. Theodore Carlton Richardson, Adversary Proceeding No. 94-554, to determine the dischargeability of the debtor's debt to the plaintiff. (The adversary proceeding was transferred to that court from this court.) The Florida bankruptcy court saw fit to let the questions of liability and the amount of the debt to be liquidated in state court. Accordingly, that court entered an Order of Abatement on November 29, 1995, directing that the adversary proceeding was abated until the plaintiff liquidated its claim against Richardson in a court of competent jurisdiction. On September 30, 1996, Peterson attempted to proceed to do so by seeking to be added or substituted as a party in a state court proceeding against

Richardson which was already pending, the lawsuit of Deborah Watson, et al. v. T. Carlton Richardson, Case No. 90-25569 (Circuit Court of the Thirteenth Judicial Circuit, State of Florida, in and for Hillsborough County, Civil Division). The Circuit Court denied that motion by an order entered on October 25, 1996, but on reconsideration, the Circuit Court, by an order entered on November 15, 1996, permitted Peterson to be added or substituted as a party plaintiff.

The debtor filed an adversary proceeding in this court (T. Carlton Richardson v. Ron Peterson, etc., et al., Adversary Proceeding No. 00-0026) contending that Peterson's actions in the state court constituted contempt. The Circuit Court proceedings have been held in suspense. In response, Peterson filed his Motion for Relief from Discharge Injunction, the motion which this decision addresses.

Peterson relied on the Order of Abatement in recommencing the proceedings in state court. The discharge injunction was not violated: the Florida bankruptcy court treated fixing of liability and of the amount of liability as a condition to its determining the dischargeability of the debt. So the Florida state court proceeding was merely part and parcel of the dischargeability proceeding in the Florida bankruptcy court. Peterson was prosecuting the Florida state court proceeding only to collect the debt to the extent that it is eventually held to

be nondischargeable and hence unaffected by the discharge injunction. A dischargeability proceeding, and proceedings ancillary thereto, do not violate the discharge injunction.

Even if the discharge injunction was violated, it was at most an inadvertent, innocent and technical violation which did not offend the spirit of the discharge injunction. It plainly makes sense that a bankruptcy court ought to be able to stay a dischargeability proceeding until the existence of liability and the amount of liability is fixed in state court, and that in so doing the recommencement of state court proceedings is not an attempt to collect the debt to the extent that it proves to have been of a dischargeable character and hence discharged.

Richardson has failed to articulate any reason for not lifting the discharge injunction and annulling it from the entry of the Order of Abatement. The court believes that the sound, fair, and reasonable administration of justice warrants granting such relief.

Richardson's defense to Peterson's Motion for Relief from Discharge Injunction is to urge that the Florida Circuit Court action is barred on various jurisdictional grounds. But those are grounds that Richardson can raise in the Circuit Court. It is inappropriate for the bankruptcy court in the first instance to address arguments regarding the jurisdiction of the Circuit Court to hear the action pending there against Richardson.

An order follows.

Dated: October 17, 2000.

S. Martin Teel, Jr.
United States Bankruptcy Judge

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