

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

|                                |   |                     |
|--------------------------------|---|---------------------|
| Miriam Anderson,               | : | C.A. No. 05-12-0156 |
|                                | : |                     |
| Plaintiff,                     | : |                     |
|                                | : |                     |
| v.                             | : |                     |
|                                | : |                     |
| Pennsylvania Manufacturers     | : |                     |
| Association Insurance Company, | : |                     |
|                                | : |                     |
| Defendant.                     | : |                     |

**Upon Cross Motions for Summary Judgment**

**Submitted: February 22, 2007**

**Decided: February 23, 2007**

**The Complaint is dismissed for lack of subject matter jurisdiction.**

John S. Grady, Esquire, Grady & Hampton, LLC, 6 North Bradford Street, Dover, Delaware 19904, Attorney for Plaintiff.

Danielle K. Yearick, Esquire, Tybout, Redfearn & Pell, Post Office Box 2092, Wilmington, Delaware 19899-2092, Attorney for Defendant.

Trader, J.

In this civil action for unpaid workers' compensation benefits and damages pursuant to *Huffman v. C.C. Oliphant & Son*, 432 A.2d 1207 (Del. 1981), the plaintiff alleges that the defendant in violation of 19 Del. C. Sec. 2347 is improperly withholding her workers' compensation benefits in disregard of the plaintiff's discharge in bankruptcy of her debt to the defendant. I hold that the Bankruptcy Court has exclusive jurisdiction over the applicability and interpretation of a discharge in bankruptcy.

The relevant facts are as follows: On May 9, 1994, the plaintiff was injured in an industrial accident while employed with the State of Delaware. Based on an agreement filed with the Industrial Accident Board, the defendant was entitled to receive workers' compensation benefits in the amount of \$213.40 per week. On December 4, 1997, the plaintiff settled a third-party claim against a negligent tort feisor for \$40,000.00, and on September 9, 1998, the parties agreed to compromise employer's statutory lien for \$15,411.00 of the settlement proceeds. Her employer was entitled to a future statutory credit against further workers' compensation benefits of \$20,800.00, pursuant to 19 Del. C. Sec. 2363. On September 9, 1998, the parties agreed to reduce her benefits by 50% until the \$20,800.00 credit was exhausted. On December 6, 1999, pursuant to a revised agreement, the parties agreed to deduct \$25.00 per week from her workers' compensation benefits in order to satisfy the statutory credit.

On January 12, 2005, the plaintiff filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the District of Delaware. (the "Bankruptcy Court"). On May 17, 2005, the plaintiff was granted a discharge of debts under Chapter 7 of Title 11 of the United States Code. The Chapter 7 petition that was filed by the plaintiff listed PMA Mgt. Corp. as a creditor in the amount of \$15,450.00. On January 15, 2005, the

Bankruptcy Court sent a notice of the first meeting of creditors to PMA Mgt. Corp., at 650 Naamans Road, Suite 113, Claymont, DE 19703, but the address of PMA Management Corporation's registered agent is 2711 Centerville Road, Suite 400, Wilmington, DE.

The plaintiff contends that because her "debt" to PMA Management Corporation was discharged by the Bankruptcy Court, the defendant is liable to her for the withholding of her workers' compensation benefits from the time she declared bankruptcy, plus *Huffman* damages, costs, and attorney fees. The defendant contends, *inter alia*, that this Court lacks jurisdiction over the plaintiff's claim that it violated the Chapter 7 discharge order and that its statutory credit or statutory lien against future workers' compensation benefits is not a debt under the Bankruptcy Act.

I conclude that under the facts of this case that I should not exercise jurisdiction over plaintiff's claims because I lack the authority to enforce the Bankruptcy Court's discharge order and to determine the adequacy of notice to defendant and because state courts only exercise concurrent jurisdiction over the issue of dischargeability in limited circumstances.

In determining whether jurisdiction exists, I must consider three aspects of bankruptcy law: (1) dischargeability of the debt, (2) adequacy of notice and (3) enforcement of the discharge order. State and federal courts have concurrent jurisdiction over issues of dischargeability when the discharge is raised as a defense to a state cause of action filed in a state court by a listed creditor. *See In re: McGhan*, 288 F. 3d 1172, 1180 (9th Cir. 2002). The case before me does not fit into that category. Plaintiff debtor has not raised discharge as a defense, but rather affirmatively filed suit against the

defendant claiming a violation of the discharge order. I lack the authority to enforce the Bankruptcy Court's discharge order.

Only the Bankruptcy Court has jurisdiction over enforcement of the discharge order. *See In re: McGhan*, 288 F.3d at 1180 (“Thus, just as a state court does not have the power to modify or dissolve the automatic stay, a state court also lacks authority to modify or dissolve a discharge order.”) (internal quotations omitted; internal citations omitted); *In re: Barsh*, No. 03-50819DK, 2006 Bankr. LEXIS 3529, \*6 (Bankr. Md. Dec. 13, 2006) (where there is a question whether or not the creditor has violated the discharge injunction, the bankruptcy court that issued the injunction has exclusive jurisdiction over the issue of violation and enforcement). The *McGhan* court relied on *Gruntz v. County of Los Angeles*, 202 F.3d 1074, 1082 (9th Cir. 2000), which held that bankruptcy courts are not bound by state court modifications of the automatic stay because bankruptcy court orders are not subject to collateral attack in other courts, thus any state court modification of the automatic stay would constitute an unauthorized infringement upon the bankruptcy court's jurisdiction to enforce the stay. *See McGhan*, 288 F.3d at 1179. Additionally, the *Gruntz* court held that any actions or judicial proceedings taken in violation of the automatic stay are void. *See* 202 F.3d at 1082. Accordingly, the *McGhan* court held that any state judicial proceeding that modifies a discharge order would also be void. *See McGhan*, 288 F.3d at 1180; *see also, In re: Hawley*, No. 00-20504, 2003 Bankr. LEXIS 448, at \*12 (Bankr. D. Id. Apr. 10, 2003) (holding state court judgment void because state court ruling impermissibly modified discharge injunction); *In re: Pavelich*, 229 B.R. 777, 781 (B.A.P. 9th Cir. 1999) (same).

The adequacy of notice, which defendant received regarding plaintiff's bankruptcy is also at issue in this case. Determination of the adequacy of notice required for automatic discharge is a core proceeding over which this Court lacks authority. *See McGhan*, 288 F. 3d at 1190 n.9 (citing *RTC v. McKendry*, 40 F. 3d 331, 335 (10th Cir. 1994); *Schunck v. Santos*, 112 B.R. 1001, 1005 (B.A.P. 9th Cir. 1990)). The parties essentially are asking this Court to determine whether defendant was a listed creditor in plaintiff's bankruptcy filings and whether the notice defendant received was adequate. Determination of whether a creditor was listed and whether notice was adequate are core proceeding over which I should not exercise jurisdiction.

In *In re Birthing Fisheries, Inc.* 300 B.R. 489 (B.A.P. 9th Cir. 2003), the Court made the following observations:

A bankruptcy court has original and exclusive jurisdiction over bankruptcy cases [under 28 U.S.C.S. § 1334(a)]. ...[E]xclusive jurisdiction exists over “core” proceedings [under 28 U.S.C. § 157]. A core proceeding is one that invokes a substantive right provided by Title 11 or a proceeding that could arise only in a context of a bankruptcy case.... For example, core proceedings include, but are not limited to [determinations as to the dischargeability of particular debts].... In addition, a bankruptcy court's original core jurisdiction continues in order for it to enforce its orders even after the case has been closed. A Congressional grant of exclusive jurisdiction to the federal courts includes the implied power to protect that grant. A federal court always has subject matter jurisdiction to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.

The Ninth Circuit held that a state court could not modify the bankruptcy court's discharge order or permanent discharge injunction. ...[S]tate court intrusions on all bankruptcy court orders (or other core bankruptcy proceedings) are barred. ...[A] state court is not divested of all jurisdiction to construe or determine the applicability of a discharge order when discharge in bankruptcy is raised as a defense to a state cause of action filed in state court, but rather that a state court exceeds its jurisdiction if it goes further.

*Id.* at 498-500 (citations omitted).

In state cases concerning proper notice or other bankruptcy matters never addressed by the bankruptcy courts, courts have ruled that subject matter jurisdiction is exclusively federal. *See In re McGhan, supra; Roy v. Garden Ridge*, 2006 Ga. App. LEXIS 1518, at \*\*2-3 (Ga. App. Dec. 5, 2006) (holding that the bankruptcy code preempted a state court attempt to modify or dissolve the bankruptcy court’s discharge order and ruling that even if the plaintiffs “are correct that due process violations provide a valid basis to revoke the discharge, this claim must be made in the bankruptcy court, and the discharge and injunction control until modified or reversed by the bankruptcy court.”); *Kleinheksel v. Delta Prop., Inc.*, 2005 Mich. App. LEXIS 1721, at \*12 (Mich. App. July 19, 2005) (finding that provisions of the Bankruptcy Code “not addressed in the bankruptcy proceedings... were solely within the purview and jurisdiction of the bankruptcy court, not a Michigan circuit court.”); *Hawthorne v. Akhtar Hameed*, 836 P.2d 683, 686 (Okla. App. 1989) (“Appellants’ alleged wrongful garnishment was not actionable under state law because Hawthorne was not entitled to relief in state court for acts arising solely from a violation of the automatic stay ordered by the federal bankruptcy court.”). As noted in *McGhan, supra* at 1181:

Nor do we suggest that a listed creditor such as Rutz is without means to attack a discharge order on grounds of inadequate notice or to repel attempts to enforce the order against him if notice was insufficient. Rather, we hold that only the bankruptcy court could grant such relief. Rutz had several options, such as addressing the validity of the discharge order before proceeding in state court by petitioning the court to reopen the McGhan proceedings or by petitioning the bankruptcy court for leave to file an untimely complaint of nondischargeability. If Rutz was unaware of the existence of the bankruptcy order until after he filed his state action, he could have sought to stay the lawsuit and petitioned the bankruptcy court for relief before proceeding in state court.

Because this claim centers around such core bankruptcy matters as the adequacy of notice provided to a creditor, the dischargeability of debt and whether the alleged debt is a nondischargeable recoupment, and because these issues were never contested in the Bankruptcy Court, I hold that this Court does not have jurisdiction over the subject matter of this case.

Accordingly, the plaintiff's Complaint is dismissed for lack of subject matter jurisdiction.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**