

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
Central Division

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In re	:	
	:	
CHARLES ROGER POLYCHRONIS	:	Bankruptcy No. B-79-00032
	:	
Bankrupt	:	
	:	
RUTH BURKEHART	:	
	:	
Plaintiff	:	
	:	
vs	:	
	:	
CHARLES ROGER POLYCHRONIS	:	SUPPLEMENTAL MEMORANDUM
	:	AND ORDER
	:	
Defendant	:	
	:	

At a pre-trial conference held on April 4, 1980, the Court denied defendant's motion for summary judgment. Due to some ambiguity in the Court's ruling, and in an attempt to clarify that ruling, the Court now supplements its oral findings of fact and conclusions of law previously made on the record.

Plaintiff filed a negligence action against the defendant in state court on the last day within the statute of limitation. The defendant subsequently filed a petition in bankruptcy listing the plaintiff as a creditor. Plaintiff then filed a complaint in this Court based on the identical facts alleged in the state court cause of action asking for a determination of the nondischargeability of that debt under §17a(8) of the Bankruptcy Act, former 11 U.S.C. §35a(8). To come within the §17a(8) exception, this complaint, by necessity, alleged the willful and malicious nature of the bankrupt's acts. The bankrupt filed a motion for summary judgment based upon his assertion that the statute of limitation barred the plaintiff's claim in this Court. Plaintiff then filed a motion to amend her complaint to allege more clearly that her claim in this Court was based upon the state court

action or to amend the state court complaint to allege the willful and malicious nature of the bankrupt's acts. Since the transaction shows that this motion to amend was never formally ruled on, as intended, and as justice is best served by considering motions together, the Court denies defendant's motion for summary judgment, as previously entered, and partially grants plaintiff's motion to amend upon the following reasoning.

Rule 15, Fed.R. Civ.P., made applicable here by Rule 715, Fed.R. Bankr.P., allows leave of the court to amend to be "freely given when justice so requires." Plaintiff's amendment to her complaint in this Court, more fully alleging its reliance on the previously filed state court action, would simply clarify plaintiff's original intent without any resulting prejudice to defendant's rights and would clearly promote, as will become apparent, a more just and efficient disposition of this proceeding. Therefore, this aspect of plaintiff's motion must be granted. The Court does not have the power, however, to grant the plaintiff leave to amend in state court, and since this amendment is not necessary to act on plaintiff's present complaint, as will be more fully explained, this request to amend must be denied.

This Court has exclusive jurisdiction under §17 of the Bankruptcy Act, former 11 U.S.C. §35, to determine the dischargeability of all provable debts. See Brown v. Felsen, 442 U.S. 127 (1979). See also 1A Collier on Bankruptcy ¶17.18A (14th Ed. 1976). Jurisdiction is also present in this Court to liquidate provable debts under §63a, former 11 U.S.C. §103a, so as to entitle them to allowance against the bankrupt estate. As the debt involved here is based upon a suit for negligence previously filed in state court, the claim is a provable claim under §63a(7), former 11 U.S.C. §103a(7), and as such, can be reduced to judgment in this Court. See 3A Collier on Bankruptcy ¶63.29, at 1909-1910 (14th Ed. 1976). Jurisdiction to reduce this claim to

judgment is also conferred as an incident of this Court's power to determine the dischargeability of the debt under §17c, former 11 U.S.C. §35c. See 1A Collier on Bankruptcy ¶11.08[2], at 1177 (14th Ed. 1976).

In the posture of this proceeding, then, the Court's first obligation is to liquidate the debt through litigation of the basic issues of the state court action or to vacate the stay to allow the state court to liquidate the debt. While plaintiff's preference with respect to this choice is at first unclear from her pleadings, at pre-trial conference her election to litigate all issues in this Court was clearly stated. The Court's ruling reflects that election.

If this Court were to vacate the stay, the action would proceed in state court without bar by the state statute of limitations since the state court complaint was timely filed. The fact that the state court complaint does not allege willfulness and maliciousness makes no difference, for these allegations are not necessary to establish the existence of the debt under state law, simple negligence being sufficient, but are relevant only in the context of plaintiff's federal claim of nondischargeability. Cf. Brown v. Felsen, supra (federal nature of claims of non-dischargeability).

Instead of vacating the stay, this Court may, as preferred by plaintiff, exercise its concurrent jurisdiction, arising under §63a(7), former 11 U.S.C. §103a(7), and as an incident of its determination of the §17 action, to liquidate the debt by determining liability under state law. It would be incongruous to conclude that the statute of limitation bars the action simply because the debt is to be liquidated in this forum when it could proceed in state court without bar. In fact, so far as the liquidating of the debt is concerned, the action in this court and the action in state court are the same. The filing in state court tolls the state statute of limitations irrespective of which of the two courts with concurrent jurisdiction hears and determines the matter.


After the debt has been liquidated, this Court then has exclusive jurisdiction to determine its dischargeability. The state statute of limitations has, of course, no application upon the federal question of dischargeability. Whether or not the issue of willfulness and maliciousness was pled and litigated at the time liability under state law was decided, it may nevertheless be pled and litigated as an element of the federal question of dischargeability. Cf. Brown v. Felsen, supra. To this element, it is axiomatic, the state statute of limitations is inapplicable.

As the foregoing suggests, this Court could vacate the stay and allow the state court to try the negligence action, but to do so would have required the plaintiff to try two law suits: one in state court to determine the existence of the debt, and one in federal court to determine the dischargeability of the debt. Instead, this Court allowed the plaintiff to try both liability and dischargeability in the same forum. To do so does not contravene a state statute of limitations. To do so does promote judicial efficiency, litigational economy and justice.

ORDER

Consistent with the foregoing, defendant's motion for summary judgment is, as earlier entered, denied and plaintiff's motion to amend her complaint in this court to more fully allege its basis in the previously filed state court action is granted. Plaintiff's motion to amend her state court complaint to allege willfull and malicious behavior on the part of the defendant is denied.

DATED this 2 day of June, 1980.


Ralph R. Mabey
United States Bankruptcy Judge

RRM/bl