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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH - CENTRAL DIVISION

IN RE:

JOSEPH A. PACHECO and
TONI DAWN PACHECO,

Appellants,

DOCTORS & MERCHANTS and
CREDIT BUREAU OF SALT LAKE,

Appellees.

ORDER

Bankruptcy No. 81-C01246

Civil No. C85-0443G

The debtors in this action have appealed an order of the Bankruptcy Court denying their Motion for Violation of Section 524 of the Bankruptcy Code and awarding appellees' attorney's fees for the first hearing on the motion and on rehearing. The parties having submitted the issues to the Court on written briefs, the Court hereinafter sets forth its ruling.

FACTUAL BACKGROUND

Joseph and Toni Pacheco filed a Chapter 7 bankruptcy in the Central District of Utah on April 19, 1981. Prior to that filing, appellee Doctors and Merchants had obtained a judgment in the amount of $368.05 against the debtors in the Murray Circuit Court. Pursuant to the bankruptcy, the debtors were discharged on July 28, 1981. The judgment had not been paid prior to or after the filing of the bankruptcy and appellee Doctors and Merchants took no action after receiving notice of the bankruptcy filing in any way to effect or collect on the judgment.

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In March of 1984, the Pachecos made application with two mortgage institutions to obtain financing for the purchase of a home. Both applications were denied. The Pachecos then obtained a credit report from appellee Credit Bureau of Salt Lake to determine what factors were preventing their ability to obtain a home loan. The Credit Profile reflected the judgment of Doctors and Merchants dated August 6, 1980, in the amount of $300.00. The Pachecos contended that the judgment of Doctors and Merchants was the reason they were denied the loans. That conclusion, however, is not necessarily borne out by the evidence. A judgment entered June 1, 1983, against the Pachecos also appeared on the Updated Credit Profile and may well have been a compelling factor in the denial of both loans.

After obtaining a credit report, Mr. Pacheco attempted to have the judgment of Doctors and Merchants stricken by presenting his bankruptcy papers to the Credit Bureau and telling the Bureau that it was not honoring his bankruptcy. Mr. Pacheco alleged that the Credit Bureau agree to erase the judgment if he paid the $300.00 to Doctors and Merchants, which, of course, he refused to do. Pachecos' counsel also informed the Credit Bureau of the alleged failure to honor the bankruptcy, but the Credit Bureau refused to remove the judgment. Thereafter, the Pachecos filed a motion in the Bankruptcy Court alleging that the Credit Bureau of Salt Lake and Doctors and Merchants had violated Section 524 of the Bankruptcy Code. The Bankruptcy Court found no violation by either of the appellees, found bad faith by plaintiff's counsel for bringing the action, and awarded

appellees' attorney's fees under Bankruptcy Rule 9011. The Bankruptcy Court further entertained the argument of Pachecos' counsel on his Motion for Rehearing, after which the Court ruled that the Motion for Rehearing was also in bad faith under Rule 9011 and ordered additional sanctions. From those rulings, appellants appeal.

I. Section 524.

a. Notation of the Prebankruptcy Judgment and the Bankruptcy

The first issue presented on appeal is whether either appellee violated Section 524 of the Bankruptcy Code by the Credit Bureau's listing of the prebankruptcy judgment. Section 524 states, in pertinent part:

> (a) A discharge in a case under this title--
> (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, or 1328 of this title, whether or not discharge of such debt is waived;
> (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; . . .

11 U.S.C. §524 (a)(1)-(2).

The obvious purpose of that section is to give "complete effect to the discharge and to eliminate any doubt concerning the effect of the discharge as a total prohibition on debt collection efforts." S. Rep. No. 989, 95th Cong., 2d Sess., 1, 80, reprinted in 1978 U.S. Code Cong. & Ad News 5787, 5866.

It is meant to enjoin "any act to collect, such as dunning by telephone or letter, or indirectly through friends, relatives, or employers, harrassment, threats of repossession, and the like." Id.

Listing on a credit history a prebankruptcy judgment and, indeed, the bankruptcy itself, which serves to discharge the debt, does not violate the letter or spirit of the Section 524 injunction provisions. Such a listing does not constitute an act to collect a discharged debt. The purpose of the bankruptcy laws is not to secrete the fact of the bankruptcy and/or prebankruptcy debts. The bankruptcy and prebankruptcy debts are factors that a party who is asked to extend credit is entitled to know and consider in determining a person's credit-worthiness. The notation of the judgment and the subsequent bankruptcy on the appellants' credit report are authorized by Title 15, Section 1681c of the U.S. Code, which states:

> (a) Except as authorized under Subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:
>
> (1) Cases under Title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.
>
> (2) Suits and judgments which from the date of entry, antedate the report by more than seven years or until the governing statue of limitations has expired, whichever is the longer period.

By implication, then, this statute allows the notation on the Debtors' Credit Report to seven years or the applicable statute of limitations for a judgment and ten years for a bankruptcy.

The judgment against appellants was entered in 1980, and their bankruptcy occurred in 1981, both well within the seven and ten year periods. Although the judgment was discharged, the record suggests that a valid judgment lien may have survived the discharge order, which appropriately would be noted on the Debtors' Credit Report. This court therefore affirms the ruling of the Bankruptcy Court on its finding of no violation of Section 524 for the notations on appellant's Credit Report.

b. Attempts by either appellant to collect

As discussed above, any act to collect a judgment that has been discharged in bankruptcy would violate the injunction provisions of Section 524. The next issue is whether either appellant attempted to collect the prebankruptcy judgment in violation of Section 524. The record of Mr. Pacheco's testimony reflects that Mr. Pacheco obtained from the Salt Lake Credit Bureau a credit report that showed the prebankruptcy judgment of $300.00. Mr. Pacheco presented his bankruptcy papers to the Credit Bureau in an attempt to have that judgment eliminated from his credit report. Mr. Pacheco also testified that a supervisor at the Credit Bureau stated that "[the judgment creditor] would not honor the bankruptcy" unless Mr. Pacheco paid the $300.00 judgment. (R. at 14, 22.) In other words, they would eliminate the judgment from the credit history if Mr. Pacheco paid the $300.00 judgment. The Bankruptcy Court later struck that testimony as hearsay and found no violation of Section 524 by either appellee. The Court also found that neither the judgment creditor nor the debtors had caused or asked that the judgment be

vacated pursuant to Bankruptcy Rules 4003(d) and 9014 and that the Credit Bureau had no duty to investigate whether the judgment had been discharged in the bankruptcy. Therefore, the Court ruled, the notation on the Credit Report was not inappropriate.

This court finds that the Bankruptcy Court ruled correctly by finding no admissible evidence to support a claim that either or both appellees acted to collect the judgment. The record is clear that the judgment was discharged, but it is unclear as to whether it survived the bankruptcy as a valid judgment lien. It is of no consequence to the issue before the Court, however, because no action has been taken to collect the judgment.

II. Rule 9011 Sanctions

The Bankruptcy Court ruled that the Motion for Violation of Section 524 had "been brought in bad faith, not in the sense it was done maliciously, but in the sense it was done without a good faith examination into its merits." The court therefore awarded against the debtor and his attorney, attorney's fees of $70.00 each to the appellees pursuant to Bankruptcy Rule 9011. Appellants' counsel filed a Motion for Rehearing on January 25, 1985 on the bad faith portion of the Court's finding and a Motion Objecting to the Proposed Findings of Fact and Order prepared by counsel for Doctors and Merchants. The Court, prior to the rehearing, had prepared its own order which reflected the ruling of January 16, 1985 and again allowed costs, including attorney's fees, to be taxed against debtors' counsel upon presentation of affidavits setting forth costs. At the rehearing

on March 26, 1985, the Bankruptcy Court upheld its prior ruling and promulgated the Order it had prepared. Both appellants submitted affidavits of costs and attorney's fees, which totaled $898.75.

Regarding appellants' objections to the findings of objective bad faith and the sanctions, Bankruptcy Rule 9011 states:

> The signature of an attorney . . . constitutes a certificate by him that he has read the document; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law as a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause delay, as to increase the cost of litigation. . . . If a document is signed in violation of this rule, the court on motion as on its own initiative, shall impose on the person who signed it . . . an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

At the initial hearing, the Bankruptcy Court awarded sanctions because debtors' counsel had failed to perform sufficient research, and had counsel made a minimal inquiry into the law, he would have discovered that no violation of section 524 occurred. At the rehearing, the Court awarded further sanctions because, as a legal matter, he could not see how someone after research could believe that the language of section 524 prohibited someone else from saying "Joe filed bankruptcy and discharged a judgment," which the court found essentially to have occurred. As stated above, this Court agrees with the Bankruptcy Court's

interpretation of Section 524 as not prohibiting such a declaration on a credit report. Assuming that at Doctors and Merchants' insistence, the Credit Bureau had stated it would strike the notation if the debtors paid the $300.00 judgment, that is not an act to collect the judgment where the Credit Bureau is entitled by law to report comprehensively the debtor's credit history. Under the standard of review set forth in Bankruptcy Rule 8013, then, this Court will not set aside as clearly erroneous the Bankruptcy Court's finding of objective bad faith for failure minimally to research the law and the initial award of attorney's fees. However, this Court is troubled by the sanctions given at the rehearing. In this regard, the record reflects some errors, although minor, in the findings of fact drafted by counsel for Doctors and Merchants, which may have justified some objection by counsel for appellant. More importantly, the motion for rehearing was primarily based on counsel's claim that he had done more than minimal research in the area and had failed to find law on either side of the Section 524 question. This may have been less than brilliant research, but leveling sanctions in such a situation may have a definite chilling effect on legitimate motions to rehear in almost any factual or legal contest.

III. Bankruptcy Court's Order

Appellant objects to the Bankruptcy Court's preparing an order prior to the rehearing that reflected the Court's ruling of January 16 and allowed the additional sanctions. But if the Court had been persuaded by appellants' counsel to alter or amend

its prior ruling, inconsistent with the prepared order, no doubt it would have prepared and signed a different order. For the foregoing reasons, the Court affirms the actions and rulings of the Bankruptcy Court in all particulars, except that the Court reverses the Bankruptcy Court's award of costs and attorney's fees at the rehearing.

IT IS SO ORDERED.

DATED: January 21st, 1986.

J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

COPIES TO: 1-24-86mc
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