

IN THE UNITED STATES BANKRUPTCY COURT

77

FOR THE DISTRICT OF UTAH

COUNTER COPY - DO NOT REMOVE -

In re) Bankruptcy Case No. 81C-01793
ANN LYNELL ROSE BRUNDLE,)
Debtor.) Civil Proceeding No. 83PC-0331
MEMORANDUM DECISION

This matter was heard on April 8, 1983 on debtor's motion for an order to show cause against Utah State Employees Credit Union for an alleged violation of 11 U.S.C. § 524 by attempting to collect a discharged debt. The Court took the matter under advisement and now files this memorandum decision.

The parties stipulate to the following facts.

On October 15, 1979, a Utah state court rendered its decision awarding debtor \$7,000 in her action for divorce against David Brundle. The state court found that the \$7,000 payment was "to be payable to plaintiff from defendant in cash and within sixty days from the date of this decision."

At some previous time not specified by the parties, Utah State Employees Credit Union obtained a judgment against debtor. On October 25, 1979, the Credit Union procured issuance of a writ of garnishment against Mr. Brundle commanding him to withhold payment of any debts due to debtor and to answer interrogatories concerning such debts. On November 9, 1979, Mr. Brundle filed answers to the interrogatories indicating that he owed the \$7,000 in question. On December 27, 1979, a garnishee judgment was

entered against Mr. Brundle. On February 25, after Mr. Brundle failed to appear in proceedings supplementary to the writ of garnishment, the state court issued an order to show cause against Mr. Brundle.

At some previous time not specified by the parties, Mr. Brundle appealed the state court's decision in the divorce action. On the strength of his appeal, Mr. Brundle obtained an order from the state court setting aside the garnishee judgment against him pending the appeal but ordering him to comply with the garnishment and permitting the Credit Union to "take such action in connection with the garnishment" after the disposition of the appeal as it saw fit. This order was signed on April 22, 1980.

On February 3, 1981, the Utah Supreme Court affirmed the decision of the lower court in the divorce action. On April 21, 1981, the Credit Union moved in the state court for the re-entry of the garnishee judgment and gave notice of a hearing to be held on May 6.

On May 11, 1981, debtor filed a petition for relief under chapter 7. Her claim to an exemption in the \$7,000 was uncontested. Debtor listed the Credit Union's claim as unsecured. No proofs of claim were filed because the Clerk designated the case as a probable no-asset case.

On May 19, 1981, the state court held a hearing on the Credit Union's motion for the re-entry of the garnishee judgment.

The motion was granted and a judgment was signed on May 21, 1981.

On July 28, 1981, an order of discharge was entered in debtor's bankruptcy case.

On March 31, 1983, debtor sought and obtained an order to show cause against the Credit Union based on her allegations that the Credit Union was attempting to collect a discharged debt.

DISCUSSION

On May 11, 1981, when debtor filed her petition in bankruptcy, the Credit Union held a valid garnishment lien on the \$7,000 debt owed to her by Mr. Brundle.¹ See In re Larson, 21 B.R. 264, 268 n. 4 (Bk. D. Utah 1982). That lien was a judgment lien within the meaning of Sections 101(27) and 101(28). The lien may have been, and may still be, avoidable under Section 522(f)(1). Debtor has not sought to avoid the lien. Debtor's listing of the Credit Union as the holder of an unsecured claim, on these facts, did not remove the lien. That garnishment lien, if it was still valid under the state court's April 22, 1980 order of continuance, survived debtor's bankruptcy unaffected. See Section 506(d); H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 357 (1977); S. Rep. No. 95-989, 95th Cong. 2d Sess. 68 (1978).

1

The parties have not challenged the authority of the state court either to issue the garnishment or to order the garnishment to be continued pending appeal.

Thus, although the state court's order and judgment of May 21, 1981 was void because it was made in violation of 11 U.S.C. § 362(a),² the Credit Union's garnishment lien remained attached to the \$7,000 debt and, when the automatic stay terminated under Section 362(c)(2)(C) on July 28, 1981, the Credit Union was free to enforce its lien against the \$7,000 debt.

No facts have been presented which suggest that the Credit Union has, in violation of Section 524, attempted to collect its discharged debt. The Credit Union's lien is enforceable against the \$7,000 debt. This is true even though debtor claimed an exemption in the \$7,000 because of Section 522(c)(2), which permits the enforcement of valid liens against property claimed as exempt.

For these reasons, the order to show cause is dismissed. The parties are advised that this Court has ruled that a debtor may avoid liens under Section 522(f) even after a discharge has been granted but that if, post-discharge, the lien holder has incurred expenses in enforcing its lien the debtor may be required to reimburse those expenses as a condition of lien avoidance if the equities of the case so dictate. Valdez v. Midland Finance (In re Valdez), 82PC-1292 (unpublished oral ruling November 22, 1982).

2

Acts taken in violation of the automatic stay are void. Kalb v. Feuerstein, 308 U.S. 433 (1940).

DATED this 19 day of April, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE