UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In re:	:	**Case No. 83-1393-DH**
LARRY R. COCHRAN,	:	
	:	
	:	**Chapter 7**
Debtor.	:	
	:	

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ORDER— MOTION FOR FINDING CIVIL CONTEMPT AND OBJECTION THERETO

On January 4, 2000, hearing was held on Debtor's Motion for Finding Civil Contempt against Cedar Johnson Farm Service Company and Objection Thereto. Debtor was represented by attorney Steven G. Klesner. Respondent was represented by Burton H. Fagan for Michael P. Mallaney. At the conclusion of the hearing, the court took the matter under advisement. The court considers the matter fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S. C. § 157(b)(1) and § 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O). Upon review of the pleadings, evidence, memorandums, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

FINDINGS OF FACT

1. The Debtor is Larry Cochran. Prior to 1983, he was engaged in farming in the Oxford area of Johnson County, Iowa. In conjunction with his farming operation, he

became indebted to Cedar Johnson Farm Service Company, which later came to be known as New Horizon FS, Inc., an agricultural supplier in Oxford, Iowa.

2. On January 17, 1983, in Case No. 47131, the Iowa District Court for Johnson County entered judgment of $8,778.78, plus interest, for Cedar Johnson Farm Service Company (hereinafter Cedar Johnson) against Debtor.

3. On October 4, 1983, Debtor filed a petition with the United States Bankruptcy Court of the Southern District of Iowa requesting relief under Chapter 7 of Title 11. His address was shown as R.R. # 1, Box 127, Oxford, Iowa. Cedar Johnson Farm Service Co., Oxford, Iowa, was scheduled on Schedule A-3 as a Creditor Having Unsecured Claim Without Priority. The claim for $10,589.49, including interest, was scheduled as having been incurred as a result of a judgment in Johnson County District Court.

4. No objections to discharge were filed. On January 19, 1984, Debtor received a discharge of pre-petition debts pursuant to 11 U.S.C. § 727. The Cedar Johnson debt was discharged.

5. In July of 1995, Cedar Johnson Farm Service Co. and Linn Jones Farm Service Co. merged and became New Horizon FS, Inc. (hereinafter New Horizon). The main office moved to North Liberty, Iowa, and the older records of the former companies were stored.

6. David Francis Summers (hereinafter Summers) began employment with New Horizon on September 15, 1995. He works with accounts receivable, payroll, benefits, and handles collections. He has prior experience with accounts that were

scheduled by debtors who filed bankruptcy and were granted a discharge of the indebtedness.

7. In September of 1998, John Shepherd (hereinafter Shepherd) of Asset Location Services, 221 E. Market, Iowa City, Iowa, solicited the Cochran account.

8. On September 14, 1998, New Horizon assigned the Johnson County judgment to Asset Location Services. The assignment states that Cedar Johnson assigns the judgment to Asset Location Services, and "further warrant[s] that the entire amount of $8,778.78 is unpaid, due and owing plus interest from the date of JUDGMENT to the date of Satisfaction." New Horizon, as the successor in interest to the judgment creditor, Cedar Johnson, was to receive 40% of total funds collected, and Asset Location Services was to receive 60%.

9. On September 16, 1998, Shepherd, as representative of Asset Location Services, signed a Plaintiff's Order to Levy directing the Johnson County Sheriff to levy on all of Debtor's personal property including garnishment of accounts at the Hawkeye State Bank and seven other financial institutions. The next day, a General Execution issued from the Iowa District Court for Johnson County, Iowa to levy on the goods, chattels, lands, and tenements of Debtor in the sum of $8,778.78, plus costs, and interest.

10. On September 23, 1998, the Johnson County Sheriff garnished $465.42, from Debtor's account at the Hawkeye State Bank, in Iowa City, Iowa.

11. When he learned of the garnishment, Debtor attempted to contact Summers. Summers never returned Debtor's calls.

12. On September 28, 1998, Debtor retained John T. Nolan, attorney at law, as counsel regarding the garnishment of his bank account. Mr. Nolan filed an answer to garnishment in the Johnson County case. The district court treated the answer as a motion to quash the garnishment and set the matter for hearing on October 15, 1998.

14. On October 15, 1998, the Iowa District Court for Johnson County issued an order stating that Plaintiff, Cedar Johnson, voluntarily returned the garnished funds and agreed to pay the cost of the garnishment. The order additionally stated the motion to quash was withdrawn without prejudice and Defendant, Larry Cochran, intended to pursue actions in state and federal court for wrongful attachment by garnishment.

15. Cedar Johnson had actual notice of the filing of Debtor's Chapter 7 bankruptcy and did not file an objection to discharge. Cedar Johnson had actual notice of Debtor's discharge.

16. Debtor was quite distraught when the Hawkeye State Bank notified him that his savings account had been garnished. He was particularly distressed because of the intervening length of time, fifteen (15) years, since the filing of his Chapter 7 bankruptcy and resulting discharge of debt. During this time period, he worked hard to restore his credit and rebuild his reputation in the community as a person who had a good credit rating. Debtor was quite embarrassed when he checked his accounts at other banks inquiring whether these had been garnished, also.

17. Oxford, Iowa is a small town of about seven hundred to eight hundred (700-800) people. It is a close knit community and judgmental about people who do not pay their bills.

18. Larry Cochran was very upset over this situation, particularly after he had worked so hard to rebuild his reputation in the community. He felt that the people of Oxford treated him as a shameful person and he suffered from this treatment.

DISCUSSION

This matter comes before the court on Debtor's Motion for Finding of Civil Contempt. Debtor asks the court to find Cedar Johnson in contempt of this court because the assignment of judgment to Asset Location Services and the subsequent garnishment action and levy violated the discharge injunction provided by 11 U.S.C. § 524(a). New Horizon generally denies that it violated the discharge injunction and argues that Debtor has not incurred any damages as a result of the garnishment because it returned the garnished funds and paid the costs. For the following reasons, the court finds New Horizon in contempt and will assess damages.

The Bankruptcy Code provides that a discharge under Chapter 7 discharges the debtor from "all debts that arose before the date of the order for relief" except as provided in § 523. 11 U.S.C. § 727(b). A discharge voids any judgment that is a determination of personal liability of the debtor, and operates as an injunction against attempts to collect a discharged debt. 11 U.S.C. § 524(a)(1) & (2). The discharge injunction embodies the "fresh start" provided by the Bankruptcy Code by allowing the debtor a new opportunity at life without former creditors pressuring for the repayment of discharged debts. In re Lafferty, 229 B.R. 707, 712 (Bankr. N. D. Ohio 1998). The discharge injunction operates as a specific order of a bankruptcy court and its violation serves as the basis for a finding of civil contempt. Swaringim v. Swaringim (In re Swaringim), 43 B.R. 1, 3 (Bankr. E. D.

Mo. 1984); Cherry, III v. Arendall (In re Cherry), 2000 WL 361972 *7 (Bankr. E. D. Va. March 8, 2000).

Bankruptcy courts have the inherent power to sanction for contempt, Caldwell v. Unified Capital Corp. (In re Rainbow Magazine), 77 F.3d 278, 283-85 (9th Cir. 1996), however, the court should "'exercise caution in invoking its inherent power.'" Hardy v. United States Revenue Service (In re Hardy), 97 F.3d 1384, 1389 (11th Cir. 1996) quoting Chambers v. NASCO, Inc., 501 U.S. 32, 44-45 (1991). In exercising such caution, the court may instead rely on its statutory contempt powers provided by § 105 and Fed. R. Bankr. P. 9020. Id.

Section 105 provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. The language of § 105 broadly encompasses any type of order for relief, whether monetary or injunctive, so long as it is necessary or appropriate to carry out the provisions of the Bankruptcy Code. In re Hardy, 97 F.3d at 1389; see also Brown v. Ramsay (In re Ragar), 3 F.3d 1174, 1179-80 (8th Cir. 1993)("If a bankruptcy court can decide the qualification of attorneys to represent parties before it, which no one denies, and if such decisions are necessary or appropriate in the execution of the court's duties under Title 11, which again no one denies, it is likewise necessary or appropriate for the court to enforce its own orders." The panel also approved of the reasoning of Burd v. Walters (In re Walters), 868 F.2d 665, 668-70 (4th Cir. 1989) which held that bankruptcy courts may enter civil contempt orders that are reviewable only upon appeal.). Rule

9020(b) provides that contempt not committed in the presence of the court may be determined only after notice and a hearing.

There has historically been some confusion in the courts over the distinction between civil contempt and criminal contempt. Hubbard v. Fleet Mortgage Co., 810 F.2d 778, 781 (8th Cir. 1987). The major distinction lies in the purpose of the sanction. Criminal contempt employs a penalty that is punitive, which is intended to "vindicate the authority of the court." Id. Civil contempt employs a penalty that either compensates the complaining party or coerces the offending party to comply with the court order. Id. In this case, Debtor requests compensation for damages he incurred as a result of the alleged violation of the discharge injunction. Therefore, Debtor's motion is one of civil contempt.

"A finding of civil contempt must be based on 'clear and convincing evidence' that a court order was violated." Jove Engineering, Inc. v. I.R.S. (In re Jove Engineering, Inc.), 92 F.3d 1539, 1545 (11th Cir. 1996). To sustain a motion for contempt, the debtor must prove that the defendant knew of the order and knowingly committed the offending act. Atkins v. Martinez (In re Atkins), 176 B.R. 998,1009 (Bankr. D. Minn. 1994). Because civil contempt is remedial in nature, the subjective intent of the alleged offender in doing the act is unimportant. McComb v. Jacksonville Paper Co., 336 U.S. 187,189 (1946); see also United States v. Ofe, 572 F.2d 656, 657 (8th Cir. 1978)("Willfulness need not be proven in a civil, as opposed to a criminal, contempt proceeding"); In re Atkins, 176 B.R. at 1009-10 (Absence of willfulness does not preclude a finding of civil

contempt). "An act does not cease to be a violation ... of a decree merely because it may have been done innocently." McComb, 336 U.S. at 189.

Some courts have cited Hubbard v. Fleet Mortgage Co. for the proposition that the court must make a finding that the defendant "willfully" committed the offending act. E.g., Saeger v. Itt Financial In re Saeger Services, 119 B.R. 184, 190 (Bankr. D. Minn. 1990). However, as the bankruptcy court in Atkins noted:

> To be sure, in a decision on contempt proceedings based on a violation of the discharge injunction, the Eighth Circuit cited certain decisions for the proposition that
>
> > in order to find a person in contempt of court it must be shown that he knowingly and *willfully* violated a specific court order,
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> Hubbard v. Fleet Mortgage Co., 810 F.2d 778, 781 (8th Cir. 1987) (emphasis added). In the same decision, it held that
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> > "willfulness" in contempt cases "'means a deliberate or intended violation, as distinguished from an accidental, inadvertent, or negligent, violation of any order.'"
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> Id. (citations from quotation omitted). Hubbard, however, came out of proceedings that were commenced originally for an adjudication of criminal contempt, 810 F.2d at 780, and which were "of a dual nature, with both punitive and compensatory purposes," 810 F.2d at 782. An adjudication of criminal contempt can be based only on a finding of willfulness in the violation. Perry v. O'Donnell, 759 F.2d 702, 705 (9th Cir. 1985). Hubbard, then, does not evidence that the Eighth Circuit has chosen to depart from its own precedent, or to deny the basic principles enunciated in McComb.

In re Atkins, 176 B.R. at 1010 n. 23. Additionally, the Eighth Circuit has cited Hubbard as defining "willfulness" "in the context of criminal contempt." Wright v. Nichols, 80 F.3d 1248, 1251 (8th Cir. 1996).

The court concludes that a finding of "willfulness" is unnecessary in the context of civil contempt. The court accepts the standard enunciated in Atkins that the debtor must show that the defendant knew of the order and knowingly committed the offending

act. See also McComb, 336 U.S. at 499. The court does not believe that this standard varies greatly in substance from the Eleventh Circuit two-prong test which requires a showing that the offender knew of the discharge injunction and intended the actions which violated it. In re Hardy, 97 F.3d at 1390; see also In re Hill, 222 B.R. 119, 122 (Bankr. N.D. Ohio) (stating that the showing under Atkins would satisfy the Hardy standard).

In this case, Cedar Johnson obtained a judgment from the Iowa District Court for Johnson County on January 17, 1983. On October 4, 1983, Debtor filed for Chapter 7 bankruptcy relief. Cedar Johnson was scheduled on Schedule A-3 of Debtor's petition as a Creditor Having Unsecured Claim Without Priority. The scheduled claim of $10,589.49 referenced the Johnson County District Court case, and stated that it was incurred as a result of the judgment. On January 19, 1984, Debtor received a discharge.

The court finds that Cedar Johnson had notice and actual knowledge of Debtor's bankruptcy petition. Cedar Johnson did not object to the discharge nor argue that the debt was nondischargeable pursuant to § 523. The court holds that the debt was discharged pursuant to § 727, and the judgment was voided pursuant to § 524 as of the date of the discharge, January 19, 1984. The court finds that Cedar Johnson had notice and actual knowledge of the order discharging Debtor.

When Cedar Johnson merged with the Linn Jones Farm Service Co. in 1995 to form New Horizons, the main office moved to North Liberty, Iowa. The older records of the former companies were stored. Debtor's account, including the bankruptcy information, was among the stored records.

Summers started to work for New Horizon on September 15, 1995. His job includes accounts receivable, payroll, benefits, and collections. He has prior contact with accounts in which Debtors have filed bankruptcy and received a discharge. When Shepherd of Asset Location Services solicited Debtor's account from New Horizon, Summers never looked for Debtor's file. Although the information was available in the stored records, Summers signed the assignment of the judgment without checking the account. That assignment warranted that the entire amount of $8,778.78 was unpaid, due and owing with interest from the date of judgment to satisfaction. Summers did not even know how old the judgment was; he first learned of it when Shepherd contacted him.

On September 16, 1998, Shepherd, as representative of Asset Location Services, signed a Plaintiff's Order to Levy on all of Debtor's property including garnishment of accounts at eight financial institutions. The Johnson County Sheriff proceeded with the general execution and garnished Debtor's account at Hawkeye Bank, Iowa City. All the actions taken were based on a void judgment and discharged debt. Therefore, the court holds that New Horizon violated the discharge order of this court and the accompanying injunction pursuant to § 524.

The Bankruptcy Code does not specifically provide for any relief under § 524 except that of an injunction. However, after a finding of civil contempt, the court can order compensation for losses or damages. McCombs, 336 U.S. at 190. The court should require full remedial relief, including the payment of money. Id. at 193-4. Costs and attorney fees are available as compensatory damages. In re Hill, 222 B.R. at 124; In re Lafferty, 229 B.R. at 713. The court may also award damages for emotional distress

caused by violation of the discharge injunction. In re Poole, 242 B.R. 104, 112 (Bankr. N.D. Ga. 1999). Medical testimony is not necessary for a finding of emotional distress. Id., citing In re Flynn, 185 B.R. 89 (S.D. Ga. 1995).

In this case, the court holds that an award of compensatory damages including costs and attorney's fees are appropriate. Debtor's attorney has submitted an itemization of legal services totaling 14 hours. At an hourly rate of $125.00 per hour, the total amount is $1750.00. The court finds the services rendered were necessary, and that they were competently and properly performed. The hourly rate is equally reasonable and, accordingly, Debtor is awarded that amount. Additionally, Debtor paid $155.00 to reopen his bankruptcy in order to file the contempt motion. The court finds that a debtor should not be forced by a creditor to reopen the case in order to receive the protection of the discharge injunction. The court orders New Horizon to reimburse the filing fee of $155.00.

Additionally, the court finds Debtor incurred emotional distress and damage to his reputation due to New Horizon's violation of the discharge injunction and should be compensated. Like many other farmers in the 1980s, Debtor encountered insurmountable financial difficulties that drove him out of farming. The situation was made worse by a failing marriage that ended in divorce. His deteriorating financial and personal situation motivated his personal bankruptcy. After receiving a discharge and the "fresh start" afforded by Title 11, Debtor began the arduous task of rebuilding his personal life and credit rating. Over the intervening fifteen years, until the garnishment was levied on his checking account, Debtor was relatively successful at this task.

The court finds Debtor to be a credible witness. It accepts his statement that he was "really shook up" when the bank notified him that his account had been garnished. Debtor had accounts at other banks and was embarrassed when he checked to see whether they had been garnished, also. Debtor tried to call Summers to inquire why the garnishment was taking place; however, Summers never returned his calls. Debtor was particularly distressed because he was forced to relive an unpleasant part of his past that he thought he had put behind him fifteen years earlier.

In addition to the emotional distress, Debtor incurred a loss of standing in his community. Oxford is a small community of 700-800 residents. It is a close knit community that is judgmental about those people who do not pay their debts. In a large city, a person may have various circles of friends comprised of business associates, members of a church, close friends, and social acquaintances. Members of these groups might have no interaction and not know members of the others. However, in a small town like Oxford, the various groups are comprised of the same people or are at least acquainted. Everyone knows everyone else and has at least a passing knowledge of his or her affairs.

The court is secure in its belief that a reputation takes years to build or rebuild and moments to damage. There is a high value to be placed on a person's reputation. The court holds that New Horizon damaged Debtor's reputation when New Horizon assigned the void judgment, warranted as due and owing with interest, without even bothering to check its records. The testimony supports that the news of Debtor's "renewed" financial difficulties spread through Oxford tearing down what he had rebuilt over the last fifteen

years. The court finds $10,000.00 a reasonable amount for actual damages including emotional distress, damage to reputation, and loss of standing in the community.

ORDER

IT IS ACCORDINGLY ORDERED as follows:

1. Debtor, Larry R. Cochran's, Motion for Finding of Civil Contempt of Defendant, New Horizons FS, Inc., is SUSTAINED and GRANTED.

2. Debtor is awarded $155.00 for filing fees, $1,750.00 for attorney's fees, and $10,000.00 for actual damages including emotional distress, damage to reputation, and loss of standing in the community.

Dated this _____ day of August, 2000.

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RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT