

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF IOWA**

In the Matter of:

Jason D. Embrey,  
Darcianna B. Embrey,

Debtor(s)

Case No. 12-02385-als7

Chapter 7

**MEMORANDUM OF DECISION  
(date entered on docket: December 1, 2015)**

Jason and Darcianna Embrey (“Debtors”) filed a Chapter 7 Voluntary Petition on July 23, 2012, and their case was closed by final decree on October 30, 2012. After reopening their case the Debtors filed a Motion for Sanctions for Violation of the Discharge Injunction ( “Motion”) against Village at Maple Grove Townhome Association (“MGTA”) pursuant to 11 U.S.C. § 105 and 11 U.S.C § 524(a). A hearing was held on the Motion and MGTA’s objection. Upon the parties’ submission of stipulated facts and briefs the matter was fully submitted. The court has jurisdiction of these matters pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. Upon consideration of the evidence and arguments the following findings of fact and conclusions of law are entered by the Court pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. For the reasons that follow MGTA’s objection is sustained and the Motion is denied.

On the petition date Darcianna Embrey (“Embrey”) owned a townhome at 8302 Westown Parkway, Unit 3104, West Des Moines, Iowa. This property was transferred to her subject to a Declaration of Covenants, Conditions, Easements and Restrictions for the Village at Maple

Grove Plat 1. The parties agree that the Declarations set forth in those documents are characterized as covenants. MGTA was provided notice of Debtors' bankruptcy case. Before the bankruptcy case was closed Embrey's counsel sent a letter to MGTA stating that she had surrendered and abandoned the real property and requested that she be "remove(d)...from their rolls, for purposes of Association Dues." After Embrey's discharge was entered she retained legal and equitable title in the property until a sheriff's deed conveyed the property after the foreclosure sale on May 12, 2015.

MGTA attempted to collect association dues from Embrey on multiple occasions. On June 16, 2015 a small claims action was filed in state court seeking judgment for association dues accruing from April 2012 through November 2014 in the amount of \$4,053.00 plus interest, attorney's fees, and costs. It is this state court action that serves as the basis for the Motion for Sanctions.

### DISCUSSION

After entry of the discharge order a creditor cannot continue collection efforts against a debtor on a discharged debt. *Matter of Hopkins*, No. 09-05835, 2014 WL 1329163, \*7 (Bankr. S.D. Iowa April 1, 2014). 11 U.S.C section 524(a)(2) states that a discharge "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." A debtor may seek sanctions for a violation of this code provision. To be successful in this effort, the movant bears the burden to establish two elements: that there was a violation and that the violation was willful. *Pearson v. Bank of Am.*, No. 3:12-cv-00013, 2012 U.S. Dist. LEXIS 94850 \*10-12 (W.D. Va. July 10, 2012).

Embrey urges the Court to adopt the reasoning of the Seventh Circuit in *Rosteck*<sup>1</sup> based on Iowa Code § 499B and state law regarding restrictive covenants. The determination of the nature of a homeowners' association declaration is not an analysis this Court needs to undertake due to the amendment to 11 U.S.C. § 523(a)(16) under the 2005 Bankruptcy Abuse Protection and Consumer Protection Act ("BAPCPA"). Prior to 2005 post-petition association fees were subject to discharge if the debtor did not occupy or rent the property. *In re Ames*, 447 B.R. 680, 683 n. 4 (Bankr. D. Mass. 2011). BAPCPA revised 11 U.S.C. § 523(a)(16) to "substantially narrow" a debtor's ability to avoid payment of such fees. H.R. Rep 109-31, at 68 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 154.

The text of 11 U.S.C. § 523 applicable in this case states:

A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual from any debt—

[F]or a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such a unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case.

11 U.S.C. § 523(a)(16) (2015).

The statutory language is clear and unambiguous that the assessment of association fees against the title holder can continue after a bankruptcy filing and entry of discharge whether or not that individual occupies the property. *See In re Burgueno*, 451 B.R. 1, 4 (Bankr. D. Ariz. 2011)(debtor was not entitled to discharge of homeowners' association fees where debtor was

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<sup>1</sup> *In re Rosteck*, 99 B.R. 400 (Bankr. N.D. Ill. 1989).

still in title to property), *In re Ames*, 447 B.R. at 683 (“(t)he fact that the debtor stated the intent to surrender the condominium unit in accordance with § 521(a)(2)(A) and has acted on that intent in accordance with § 521(a)(2)(B) does not alter his status as the title holder of the unit and thus postpetition condominium fees and assessments arising while he remains the record owner of the unit are not dischargeable under § 523(a)(16)”).

Embrey’s reliance on pre-BAPCPA authority to support her argument is misplaced and clearly distinguishable. *See In re Langenderfer*, No. 10-31741, 12 WL 1414301, \* 2 (Bankr. N.D. Ohio Apr. 23, 2012). Notwithstanding notice to MGTA that she was surrendering her interest in the property, Embrey remained the legal owner of record of the property at issue which obligates her for payment of the association fees from and after the date of her bankruptcy petition through May 12, 2015.

Based upon the foregoing, the Court concludes the Debtors have failed to establish that MGTA was in violation of 11 U.S.C. § 524(a) by attempting to collect the outstanding association fees which were not subject to the discharge injunction.

IT IS HEREBY ORDERED that: The objection is sustained and the Motion for Sanctions is denied.

/s/ Anita L. Shodeen  
Anita L. Shodeen  
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:  
Electronic Filers in this Chapter Case