



hold Bast harmless from

first and second mortgages on said property, which amounted to a \$9,500 debt.

2. Debtor failed to pay the debt as it came due. As a result, the second mortgagees, Erik and Patricia Hanner, sued Debtor and Bast, and Bast ultimately satisfied the note by payment of approximately \$7,500.

3. On October 29, 1987, Bast initiated state court contempt proceedings against Debtor for failing to hold him harmless from the second mortgage and other debts.

4. On January 26, 1988, Debtor filed a Chapter 7 petition. On her schedule A-3, Debtor listed: 1) Bast as an unsecured creditor in the amount of \$9,500 for failure to hold Bast harmless from debts per the dissolution decree; and 2) Hanners as unsecured creditors in the amount of \$7,500 on a 1984 promissory note.

5. On February 3, 1988, an Order was issued establishing April 22, 1988, as the deadline for filing complaints objecting to Debtor's discharge (§727) or the dischargeability of debt (§523).

6. Bast did not file any complaints objecting to discharge or dischargeability of debt.

7. On March 24, 1988, Bast obtained an order requiring Debtor to appear in the Iowa District Court for Polk County on

April 29, 1988, to show cause why she should not be found in contempt of court for failure to hold Bast harmless from debts as required by the parties' April 18, 1985, dissolution decree.

In order to avoid violation of the automatic stay, said hearing was continued informally by the parties' attorneys until June 7, 1988.

8. On April 1, 1988, Bast filed a proof of claim for \$7,786.73.

9. On April 25, 1988, Debtor was granted a discharge.

10. On May 13, 1988, Bast filed an application to modify the dissolution decree. Paragraph 6 of said application states "there has been a substantial change in circumstances because of the Respondent's filing of the bankruptcy petition."

11. On June 7, 1988, a contempt hearing was held in state court, and the court took the matter under advisement.

12. On July 15, 1988, Debtor filed the instant application for contempt against Bast. In said application, Debtor argues Bast's post-discharge pursuit of his pre-petition contempt action against her violates the Court's discharge Order.

#### DISCUSSION

Two issues are presented in this case. The first is whether Bast's post-discharge pursuit of a pre-petition contempt proceeding against Debtor, based on a failure to pay a debt which was subsequently discharged, violates the discharge

injunction under §524(a)(2) as an act to "collect, recover or offset" such debt as a personal liability of Debtor. The second is whether Bast should be held in contempt for his post-discharge initiation

of modification proceedings in state court.

Bankruptcy Code §524(a) provides in relevant part that a discharge:

- (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 §727...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 (emphasis added). Said section ensures that a discharge granted a debtor under §727 will be completely effective. In re Barrup, 51 B.R. 318, 319 (Bankr. D.Vt. 1985).

Under §524(a)(1), Debtor's dissolution decree-imposed obligation to hold Bast harmless, listed as a \$9,500.00 unsecured debt on her schedule A-3, is void because a debt to a former spouse arising in connection with a dissolution decree that relates to a division of property is dischargeable. In re Britton, 51 B.R. 323, 325 (Bankr. N.D. Ind. 1985); In re Evans,

4 B.R. 232, 236 (Bankr. S.D. Ala. 1980). As a result, Debtor argues Bast's pursuit of his pre-petition contempt proceeding violates §524(a)(2) because any finding of contempt against Debtor would result in personal liability for her.

Bast, on the other hand, argues his contempt proceeding is not an action to "collect, recover or offset" any debt and thus does not violate §524(a)(2).

If Bast's actions are an effort to "collect, recover or offset" such debt, the continuation of the contempt proceeding violates §524(a) which is grounds for civil contempt. In re Rhyne, 59 B.R. 276, 278 (Bankr. E.D. Pa. 1986). Civil contempt requires findings that a specific and definite court order was violated and that the offending party had knowledge of the court's order. In re Arminio, 38 B.R. 472, 476 (Bankr. D. Conn. 1985). The moving party has the burden of proving its case by clear and convincing evidence. Rhyne, 59 B.R. at 278.

Civil contempt is a sanction to compensate a party for losses or damages sustained by reason of the contemnor's noncompliance. In re Pody, 42 B.R. 570, 574 (Bankr. N.D. Ala. 1984). A compensatory fine is used not to vindicate the court's authority but to make reparation to movant (the injured party) and restore the parties to the position they would have held had the injunction been obeyed. Id. Actual loss is the measure of

compensatory fines. Barrup, 51 B.R. at 319. The imposition of costs and attorney's fees is an appropriate sanction for civil contempt. Id; Pody, 42 B.R. at 574.

Neither Debtor nor Bast has cited nor has the Court located any case addressing the issue of whether the post-discharge

continuation of a pre-petition contempt proceeding based on a discharged debt violates §524(a)(2). Nevertheless, three cases are useful to the Court's analysis. The first is Matter of Brock, 58 B.R. 797 (Bankr. S.D. Ohio 1986). In Brock, an ex-spouse had initiated contempt proceedings in state court as a result of the debtor's failure to hold her harmless from certain specified debts pursuant to the terms of their divorce decree. The debtor filed a Chapter 7 petition six days later. The ex-spouse refused to dismiss the state court contempt action and the hearing was held in state court. The bankruptcy court found the ex-spouse to be in contempt of court for violating the automatic stay, awarded damages, including attorney fees, and determined the debt was dischargeable. The court noted "the debt in question has been determined not to be an exception to discharge; therefore, [debtor] is relieved of any obligation to pay this debt on behalf of [ex-spouse] and the debt could not be the subject of any future state court domestic relations proceedings." Id. at 809 (emphasis added).

The facts in Brock are nearly identical to those in the case at bar. The only difference is that in Brock, the ex-spouse proceeded with the contempt action pre-discharge, thus violating the automatic stay, while in the case at bar, Bast did not proceed until after Debtor's discharge was entered, thus allegedly violating the discharge. In either situation, civil contempt is

an appropriate remedy. See Rhyne, 59 B.R. at 278 (civil contempt allowed for violations of §§362(a), 524(a)). Further, Debtor's discharged debt owed to Bast is indirectly the subject of Bast's state court domestic relations contempt proceeding, which Brock prohibits. Under this reasoning, Bast's post-discharge continuation of his pre-petition contempt proceeding against Debtor violates §524(a)(2).

Another relevant case is In re Hirsch, 50 B.R. 8 (Bankr. S.D. Fla. 1985). In Hirsch, two creditors filed a motion to reopen the debtor's Chapter 7 case in order to secure permission to proceed to judgment in a state court action against the debtor pending at the time the debtor filed his Chapter 7 petition. In that suit, the creditors believed they had alleged damages from acts of debtor which were compensable from the Florida Real Estate Recovery Fund if reduced to judgment. Even though the creditors' action was listed as a debt and discharged, they stipulated they would not execute judgment

against debtor or his property. Based on that reservation, the court determined nothing under §524(a) would stop the creditors from proceeding with the litigation. Id.

Hirsch is important because it allows a creditor's discharged pre-petition state court action against debtor to proceed post-discharge only on the condition that any judgment recovered cannot be executed against the debtor or his property, and the judgment

cannot become a lien against the debtor or his property. Under

this reasoning, Bast's efforts to pursue state court contempt sanctions against Debtor would clearly violate §524(a)(2) because Bast could only collect any imposed sanction award from Debtor.

A final analogous case is In re McCrady, 23 B.R. 193 (Bankr. W.D. Ky. 1982). In McCrady, two partners had a joint and several obligation on a note to a bank. When they dissolved their partnership, the dissolution agreement provided that debtor assumed full responsibility for all partnership liabilities, both past and present. The bank was not a party to said agreement. Two years later, debtor filed a Chapter 7 petition and listed the note as a joint debt between himself and his former partner. The former partner knew of debtor's bankruptcy but did not file a proof of claim or an objection to discharge/dischargeability of debt because he relied upon the



dissolution agreement which purported to relieve him of liability. After debtor was discharged, the bank went after debtor's former partner on the note. As a result, the former partner sued debtor on the note in state court three months after debtor's discharge. The bankruptcy court ruled the former partner could not sue debtor on the note because he had actual notice of the bankruptcy and debtor's discharge had already been granted. Since the bank was not a party to the dissolution agreement, the former partner was still

liable on the note. Further, upon notice and knowledge of the bankruptcy, he took no affirmative action to protect his rights.

McCrary is important because it stands for the proposition that a creditor with actual notice and knowledge of a bankruptcy who does not take any affirmative action to protect his own rights is without legal recourse after a discharge is granted. In the case at bar, Bast had actual notice and knowledge of debtor's bankruptcy but chose not to file any complaint objecting to discharge/dischargeability of debt. Therefore, under McCrary, Bast is without legal recourse because the discharge was granted.

Upon review, the Court finds the reasoning in Brock, Hirsch, and McCrary persuasive and analogous to the case at bar.

As a result, the Court concludes Bast's post-discharge continuation of his pre-petition contempt proceeding against Debtor is an act to "collect, recover or offset" his discharged debt in violation of §524(a)(2). As noted earlier, said violation is grounds for civil contempt. The Court finds Debtor has proven by clear and convincing evidence that Bast violated the April 25, 1988, Order granting Debtor's discharge by continuing the contempt proceeding and that Bast knew of said Order. Therefore, Debtor is entitled to costs and attorney fees, the amount of which to be determined upon Debtor's filing of a detailed accounting setting forth all

costs incurred due to Bast's noncompliance with the order of discharge.

The second issue is whether Bast should also be held in contempt on account of his post-discharge initiation of modification proceedings in the state court. Debtor argues the merits of modification under Iowa Code §598.21(8) and alleges Bast cannot pursue modification proceedings in state court if the only substantial change in circumstances is her bankruptcy filing. Jurisdiction over domestic relations subject matter is and has always been in state court. See In re Dirks, 15 B.R. 775, 777 (Bankr. D.N.M. 1981); In re Abrams, 12 B.R. 300, 302

(Bankr. D.P.R. 1981). Since Bast's modification proceeding is clearly a domestic relations matter, the Court concludes it does not have jurisdiction to consider this issue.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes Bast's post-discharge pursuit of a pre-petition contempt proceeding against Debtor violates the discharge injunction under §524(a)(2), thus resulting in civil contempt.

FURTHER, the Court concludes it does not have jurisdiction to consider Debtor's modification concerns.

IT IS ACCORDINGLY ORDERED that Debtor's application to hold Bast in contempt is granted as to Bast's violation of §524(a)(2).

IT IS FURTHER ORDERED that Debtor shall file within ten days of the entry of this Order a detailed accounting setting forth all costs and attorney fees incurred on account of Bast's post-discharge continuation of the pre-petition state court contempt proceeding.

Dated this 21st day of February, 1989.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE