

**UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa**

<b>In re:</b>	:	<b>Case No. 01-4681-rjh7</b>
<b>PATREKA HARRISON and</b>	:	
<b>LARRY HARRISON,</b>	:	
	:	<b>Chapter 7</b>
<b>Debtors.</b>	:	
	:	

-----  
**ORDER - MOTION FOR SANCTIONS FOR VIOLATION OF THE  
AUTOMATIC STAY AND OBJECTION THERETO**

Debtors' motion, stylized as a Motion for Sanctions for Violation of the Automatic Stay, came on for hearing on August 11, 2004, before the United States Bankruptcy Court for the Southern District of Iowa in Des Moines, Iowa. Gail E. Bolivar appeared as counsel for the moving debtors, Patreka and Larry Harrison. Mark D. Walz appeared as counsel for Singer Asset Finance Company, LLC. At the conclusion of the hearing, the court announced its decision to grant Debtors' motion and advised the parties that it would enter written findings and a ruling thereon.

The court has jurisdiction of these matters pursuant to 28 U.S.C. §§ 157(b)(1) & 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)(A) & (O). Upon review of the pleadings, evidence, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

**FINDINGS**

1. Patreka Harrison and Larry Harrison (hereinafter collectively Debtors) filed their voluntary chapter 7 petition on September 10, 2001. Patreka Harrison (hereinafter

singularly Patreka) listed the following names that she had used in the last six years:

Patreka Ewing, Treka Harrison, Treka Ewing, and Patreka Lunsford.

2. Debtors scheduled an annuity (hereinafter the Annuity) with Aurora National Life Assurance Company (hereinafter Aurora), Contract No. C21404854A/CO1404821A as an asset of the estate.

3. Debtors scheduled Singer Asset Finance Company (hereinafter Singer) as holding an unsecured nonpriority claim in the amount of \$850,000.00 on their Schedule F. Patreka was scheduled as the owner of that asset.

4. Debtors scheduled a lawsuit on their Statement of Financial Affairs identified as Singer Asset Finance Co. vs. Patreka Marie Ewing (n/k/a Patreka Marie Harrison), which was pending in the Superior Court of the State of California in and for the County of Los Angeles, Central District. The nature of the proceeding was shown as the sale of structured settlement.

5. Debtors later amended Schedule B - Personal Property to schedule the Annuity with a market value of \$1,720,000.00. The owner of the Annuity was shown as "FL Assignments, 1219 West Street, Wilmington, Delaware 19801."

6. Debtors also amended Schedule F - Unsecured Nonpriority Claims to show Singer having an unsecured claim in the amount of \$190,996.00.

7. At the time of the filing of the chapter 7 petition, the clerk of the bankruptcy court served notice of the commencement of the bankruptcy case, the first meeting of creditors, and deadlines for objecting to exemptions, discharge, or the discharge of certain debts. The notice also announced the appointment of Deborah L. Petersen (hereinafter Trustee) as trustee to administer the assets of the estate (DN 2). Said notice

was served by first class mail September 12, 2001, on Singer at 700 Braynard Trail, Suite 200, Boca Raton, FL. 33931 (DN 6).

8. The Annuity has been and is being administered as an asset of the estate.

9. On November 28, 2001, Singer filed its Motion for Relief from Automatic Stay (DN 12). Singer alleged that Patreka had sold and assigned her rights to receive a portion of the periodic payments from the annuity payments to Singer and had breached this agreement. Singer had commenced an action in the New York Supreme Court, Index No. 102108/00, and had obtained a judgment against Patreka for the accelerated amount of the future payments. Singer alleged that this New York judgment had been domesticated with the Superior Court of the State of California in and for the County of Los Angeles on January 3, 2001, in the amount of \$857,562.29. Singer alleged that it was the owner and holder of the payments under the annuity and had a lien on them as the collateral. Singer further alleged that Patreka had no interest in the payments following the execution of the purchase agreements with Singer.

10. Singer prayed "that upon final hearing on this Motion for Relief from Stay and pursuant to 11 U.S.C. Section 362(d), the stay be modified to permit Singer Asset Finance Company, LLC to complete its action to garnish upon any judgment in favor of Singer and to pursue any an all rights and remedies available to Singer as to the Payments and Collateral and for such other and further relief as is just and equitable in the circumstances."

11. On December 27, 2001, Debtors received their discharge.

12. On April 4, 2002, a Stipulated Order on Motion for Relief from Automatic Stay (DN 40) was filed herein. This stipulation was signed by counsel for Singer and the trustee.

13. This order was drafted by counsel for Singer.

14. The order provided, in part, as follows: "ORDERED, ADJUDGED AND DECREED that the stay afforded by 11 U.S.C. Section 362 be and hereby is modified to permit Singer Asset Finance Company, LLC to enforce rights in the Property in the action pending in the California Court, the New York Court, or otherwise, provided however, the entry of this Order is without prejudice to later assertion of the claims to the Property of either the Chapter 7 Trustee, or the Debtors, in their opposition to the Motion, in the preliminary hearing on the Motion, or otherwise."

15. The only action pending at the time was the suit in the Supreme Court of the State of New York, New York County, Index Number 102108/00, and the domesticated New York judgment in the Superior Court of the State of California in and for the County of Los Angeles.

16. On May 10, 2002, Trustee filed an application in this court to employ Dayton Haigney, Esq., New York, New York, to investigate and file any actions necessary to set aside the New York judgment (DN 43). This application was approved by order entered on May 16, 2002 (DN 44).

17. On December 2, 2002, Aurora National Life Insurance Company (hereinafter Aurora) filed a complaint in this court as Adversary Proceeding No. 02-20178. Patreka, Singer, and FL Assignments were named defendants in that proceeding. This adversary proceeding is at issue and pending in this court.

18. Aurora, a California corporation, is the payor under the Annuity contract. FL Assignments is the owner of the annuity.

19. Issues in this adversary proceeding are whether Patreka had rights of ownership in the annuity contract; whether she had a right to designate a beneficiary; and, whether she had any rights of assignment under the annuity contract. Aurora requests a determination of the ownership of the stream of payments under the Annuity and an order directing the payment of the same. Said payments are currently being deposited with and are under the authority of this court.

20. On June 14, 2004, the Supreme Court of the State of New York, New York County, dismissed the New York action, Index Number 102108/00, without prejudice.

21. Singer did not appeal this order.

22. On July 6, 2004, Singer filed another complaint in the Supreme Court of the State of New York, County of New York. The caption is Singer Asset Finance Company, LLC, Plaintiff, v. Patreka Marie Ewing a/k/a Patreka Marie Lunsford a/k/a Patreka Ewing, Lunsford, Defendant, Docket Number 04-109848.

23. This second complaint states as claims for relief; 1st) breach of contract by Patreka; 2nd) conversion by Patreka; 3rd) the unjust enrichment of Patreka; 4th) injunctive relief to force Patreka to comply with the contracts. These are the same allegations as contained in the dismissed case, Index Number 102108/00.

23. The action filed by Singer on July 6, 2004, was filed without further motion by Singer and modification of the stay by this court.

24. On August 11, 2004, Debtors filed an amendment to their motion for sanctions. Although Debtors' counsel referenced the amendment at the hearing, said document was not available to the court or to opposing counsel at the hearing.

### **DISCUSSION**

This matter comes before the court on motion by Debtors for sanctions against Singer for the filing of a complaint in the Supreme Court of New York, County of New York captioned Singer Asset Finance Company, LLC, Plaintiff, v. Patreka Marie Ewing a/k/a Patreka Marie Lunsford a/k/a Patreka Ewing, Lunsford, Defendant, Docket Number 04-109848. Debtors attached the summons and complaint, identified as exhibits B and C, respectively, to their motion. Debtors contend that the filing of this complaint is beyond the scope of the order entered by the court on April 4, 2002. They ask the court to determine that the action violates the automatic stay, sanction Singer, and provide it with all other appropriate relief.

Singer disputes the allegation that it has violated the automatic stay, and argues that the new complaint is merely a continuation of the action previously pending before the New York Court. It contends that the scope of the order modifying the stay encompasses this second complaint, and therefore, no violation has occurred.

The court disagrees with Singer's interpretation of the order modifying stay and also the characterization of the second complaint being the equivalent of the matter for which stay was modified. The court agrees with Debtors that Singer has violated the automatic stay concerning that part of the Annuity which is estate property, and based on the causes set forth in Singer's complaint, that Singer is in violation of the discharge

injunction of 11 U.S.C. § 524(a)(2). For the following reasons, the court will grant Debtors relief as it deems appropriate.

"The automatic stay is a self-executing provision of the Code and begins to operate nationwide, without notice, once a debtor files a petition for relief." In re Schraff, 143 B.R. 541, 542 (S.D. Iowa 1992); see also 11 U.S.C. § 362 (a petition filed under §§ 301, 302, or 303 operates as a stay). The stay of actions against property of the estate continues until the property is no longer property of the bankruptcy estate. 11 U.S.C. § 362(c). The stay of all other acts provided in 11 U.S.C. § 362(a) remains in effect until the earliest of the time the case is closed; the time the case is dismissed; or the time the discharge is granted or denied. Id. Upon motion by a party in interest and after notice and a hearing, the court can grant relief from the automatic stay for good cause shown. 11 U.S.C. § 362(d). Such relief may include modifying, terminating, conditioning, or annulling the stay. Id.

The automatic stay has two purposes. It provides a debtor with a breathing spell from his or her creditors and prevents "one creditor from rushing to enforce its lien to the detriment of the other creditors." Ahlers v. Norwest Bank of Worthington (In re Ahlers), 794 F.2d 388, 393-94 (8th Cir. 1986) rev'd on other grounds, 485 U.S. 197 (1988). The Eighth Circuit recognized that:

[t]he automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

Id. at 394 n.3, citing H.R.Rep. No 595, 95th Cong. 1st Sess. 340, reprinted in 1978 U.S.Code Cong. & Ad.News 5963, 6296-97.

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

Id. at 394 n.4, citing H.R.Rep. No. 595 at 340, 1978 U.S. Code Cong. & Ad. News at 6297; see also LaBarge v. Vierkant (In re Vierkant), 240 B.R. 317, 320 (B.A.P. 8th Cir. 1999) and In re Scharff, 143 B.R. 541, 542 (Bankr. S.D. Iowa 1992).

Equally fundamental for the protection of the debtor is the discharge of 11 U.S.C. § 727. A successful chapter 7 bankruptcy discharges the debtor from all debts that arose pre-petition and any liability on a pre-petition claim except as provided in 11 U.S.C. § 523. 11 U.S.C. § 727(b). The discharge voids any judgment that is a determination of personal liability of the debtor, and operates as an injunction against the commencement or continuation of any action 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), 247 B.R. 176, 187 (Bankr. E. D. Va. 2000).

In this case, Debtors filed their bankruptcy petition on September 10, 2001, and the automatic stay went into effect at that time. On November 28, 2001, Singer filed its Motion for Relief from Stay to allow it to enforce the New York judgment against the stream of payments and the Annuity assets. Singer's motion alleged that it had



domesticated the judgment with the Superior Court of the State of California in and for the County of Los Angeles on January 3, 2001. Trustee and Debtors objected to Singer's motion claiming that Petreka retained an interest in the stream of payments from the Annuity. The motion for relief from stay was resolved by a consent order drafted by Singer's counsel. Singer and Trustee signed off on the order, and the court overruled Debtors' objection. Said consent order lifting stay was entered on April 4, 2002. Trustee subsequently retained New York counsel with this court's approval and proceeded to investigate the possibility of having the New York default judgment set aside.

In the interim, Aurora commenced an adversary proceeding, No. 02-20178, with this court asking for a declaratory judgment determining to whom it should remit the annuity payments. Aurora also requested and received permission to deposit the payments into the court registry until the declaratory judgment was entered. Because of issues of res judicata and collateral estoppel, such a determination rested in large part on the validity of the New York judgment.

Trustee's New York counsel was ultimately successful in having the default judgment set aside, and on June 14, 2004, the Supreme Court of the State of New York, New York County, dismissed the New York action, Index Number 102108/00, without prejudice. Said dismissal clears the way for this court to decide the merits and issue judgment in Aurora's adversary proceeding.

Singer did not appeal the New York dismissal. Rather, on July 6, 2004, it chose to file the second complaint. The court does not interpret the modification of stay order to be so broad as to allow Singer to commence a second lawsuit against Petreka.

The consent order modified the stay to allow Singer to “enforce rights in the Property in *the action pending in the California Court, the New York Court, or otherwise....*” (emphasis added). “Action” in “its usual legal sense means a suit brought in a court; a formal complaint within the jurisdiction of a court of law.” Black’s Law Dictionary 26 (5th ed. 1979). “Pending” is defined as “begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in the process of settlement or adjustment. Thus, an action or suit is ‘pending’ from its inception until the rendition of final judgment.” Id. at 1021. The prepositional phrase “in the California Court, the New York Court, or otherwise” contains a series of places and therefore, addresses the venues for the pending action. Hence, the pending action is permitted to proceed in New York where the default judgment would be contested; California, where the default judgment was transcribed; and otherwise, any other forum of appropriate jurisdiction where the pending action might be transferred.

The term “otherwise” does not, and was not intended to permit the commencement of a second action. Such an interpretation is grammatically and logically unfounded.

Accordingly, when the New York court set aside the default judgment and dismissed the complaint, it entered final judgment in the pending action. Singer did not appeal the ruling, thereby leaving the final judgment in place. Therefore, the “pending action” in New York was resolved.

As stated above, the automatic stay remains effective as to property until it ceases to be property of the estate. As of this time, Trustee has not abandoned or relinquished the estate’s interest in the stream of payments or the Annuity. Therefore, the automatic

stay remains in effect as to the estate's interest in the payments and Annuity. The court concludes that to the extent that it seeks to establish Singer's right to the stream payments and the Annuity in derogation of the estate's interest, the filing of the second complaint violates the automatic stay and is void. See LaBarge v. Vierkant (In re Vierkant), 240 B.R. 317, 325 (B.A.P. 8th Cir. 1999) (actions taken in violation of the automatic stay are void).

Debtors received a discharge on December 27, 2001. At that time, the automatic stay ceased as to Debtors personally. However, the discharge order is an injunction against creditors seeking to impose personal liability against debtors for pre-petition debts. The second complaint filed by Singer states claims for breach of contract, conversion, and unjust enrichment and requests an injunction for specific performance of contracts. Each count seeks to impose an in personam obligation on Petreka for claims that arose prior to her filing for bankruptcy protection. The deadline for filing objections to discharge or for determination of the dischargeability of a debt was December 26, 2001. Singer did not seek an extension of the deadline, nor did it file a complaint contesting the discharge of its claim. Therefore, the court concludes that the second complaint was filed in violation of the discharge injunction of 11 U.S.C. § 524(a) and should be dismissed.

Such determination by this court does not prejudice Singer in anyway. To the extent that it is the holder of a discharged unsecured debt, its right to share in the distribution in the estate's assets is unaffected. To the extent that it believes that it holds an outright ownership or security interest to payments and the Annuity, it may present and defend that claim in Aurora's adversary proceeding.

For all the foregoing reasons, the court finds that Singer violated the automatic stay and the discharge injunction of 11 U.S.C. §§ 362(a) & 524(a) and sanctions are appropriate. The court will order Singer to dismiss the second complaint filed in New York. The issue of damages will be addressed upon further notice and hearing by the court.

**ORDER**

IT IS ACCORDINGLY ORDERED AS FOLLOWS:

1. Debtors Patreka and Larry Harrison's Motion for Sanctions is GRANTED as set forth in the body of the decision.
2. Singer Asset Finance Company, LLC shall dismiss the complaint captioned Singer Asset Finance Company, LLC, Plaintiff, v. Patreka Marie Ewing a/k/a Patreka Marie Lunsford a/k/a Patreka Ewing, Lunsford, Defendant, Docket Number 04-109848 filed in New York.
3. The issue of damages will be addressed upon further notice and hearing.

Dated:

---

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