

IT IS SO ORDERED.

Dated: August 28, 2015
04:35:56 PM



Kay Woods

 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

SALVATORE DeJULIO and
SUSAN L. DeJULIO,

Debtors.

*
*
*
*
*
*
*
*

CASE NUMBER 13-42720

CHAPTER 7

HONORABLE KAY WOODS

ORDER DENYING MOTION FOR CONTEMPT

This cause is before the Court on Amended Motion for Contempt (Doc. 114) filed by Debtors Salvatore DeJulio and Susan L. DeJulio on April 21, 2015. The Debtors request the Court to find Charles Ross in contempt of court for violating the discharge injunction in 11 U.S.C. § 524(a) and award the Debtors actual damages, punitive damages and attorney fees and expenses. Mr. Ross did not file a response to the Motion for Contempt.

The Debtors filed a voluntary petition pursuant to chapter 13 of the bankruptcy code on December 13, 2013, which case was

converted to chapter 7 on April 16, 2014 (Doc. 48). In Amended Schedule F, the Debtors scheduled Mr. Ross as the holder of an unsecured nonpriority claim for a "business loan" in the amount of \$34,000.00.¹ (Doc. 49, Sched. F at 3.) Mr. Ross filed an unsecured claim for "money loaned to debtor" in that same amount on February 26, 2014, which was denominated Claim No. 17-1. (Claim No. 17-1 at 1.)

The Debtors received a chapter 7 discharge on August 1, 2014 (Doc. 97). The Certificate of Notice (Doc. 98) indicates that Mr. Ross received notice of the Order of Discharge at (i) "Charles Rose [sic], 350 Jacobs Rd., Hubbard, Ohio 44425-1945"; and (ii) "Charles Ross, c/o Melody Dugic Gazda, Esq., Henderson, Covington, Messenger, Newman, 6 Federal Plaza Central, #1300, Youngstown, Ohio 44503-1508." (Cert. of Notice at 1.)

In the Motion for Contempt, the Debtors state that they scheduled the debt owed to Mr. Ross and that Mr. Ross received notice of their discharge. (Mot. for Contempt at 1.) The Debtors assert that Mr. Ross has violated the discharge injunction in § 524(a) by engaging in the following behavior:

On or around December 9, 2014, the Debtors received an insulting and threatening holiday card from Mr. Ross stating, among other things, that the Debtors stole \$34,000 from him – the amount of the loan that was discharged. On January 2, 2015, the Debtors filed a police report in Hubbard Township as a result of the threatening nature of Mr. Ross's communications. On or

¹ The Debtors scheduled the same debt in their original Schedule F filed on January 25, 2014. (Doc. 18, Sched. F at 3.)

around February 10, 2015, the Debtors received another, more threatening letter from Mr. Ross. The letter, among other things, stated that Mr. Ross had contacted Mr. DeJulio's employer regarding the situation and that he has been telling people how the Debtors "screwed [him] out of \$34,000." He stated that these people included customers of his that also did business with Mr. DeJulio. Mr. Ross's letter also mentioned that he has had offers to do physical harm to the Debtors but he chose to turn the offers down. The Debtors filed a second police report after this letter.

(*Id.* at 1-2.) The Debtors do not specify any overt attempts by Mr. Ross to collect the debt. Instead, the Debtors summarily state, "Mr. Ross's actions in this case, in sending threatening and insulting letters to the Debtors regarding the discharge of an unsecured loan they owed him, are in violation of the discharge injunction" (*Id.* at 2.)

On August 26, 2015, the Debtors filed Supplement to Amended Motion for Contempt (Doc. 131). Three exhibits are attached to the Supplement, which the Debtors allege are: (i) Exhibit A – the holiday card Mr. Ross sent to the Debtors on or about December 9, 2014; (ii) Exhibit B – the February 10, 2015 letter Mr. Ross sent to the Debtors; and (iii) Exhibit C – the incident report the Debtors filed with the Hubbard Township Police Department on January 2, 2015.

The Court held a hearing on the Motion for Contempt on August 27, 2015, at which appeared Philip D. Zuzolo, Esq. and Ashley R. Hall, Esq. on behalf of the Debtors and Mr. Ross on behalf of himself. Counsel for the Debtors represented that Mr.

Ross's conduct, taken as a whole, was an attempt to collect the discharged debt. However, counsel for the Debtors acknowledged that Mr. Ross never expressly demanded payment for the debt. Mr. Ross represented to the Court that he never contacted any third parties regarding the debt and that his actions alleged in the February 10, 2015 letter were a "fiction." Mr. Ross further represented that he (i) was not attempting to collect the debt; and (ii) understands that the Debtors are no longer indebted to him. Finally, Mr. Ross apologized for his conduct and stated that he would have no further contact with the Debtors.

A discharge entered in a chapter 7 case generally discharges a debtor from "all debts that arose before the date of the order for relief under this chapter." 11 U.S.C. § 727(b) (2015). The discharge injunction in § 524, *inter alia*, prohibits the following:

(a) A discharge in a case under this title—

* * *

(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(a)(2) (2015).

The parties do not dispute that the debt owed to Mr. Ross has been discharged in this case. It is also not disputed that Mr. Ross did not expressly or overtly attempt to collect the debt.

Despite Mr. Ross's self-serving statement that the contents of his communications to the Debtors were a "fiction," the Court accepts (i) the allegations in the Motion for Contempt as true; and (ii) the documents attached to the Supplement as authentic. Even so, the Court finds that Mr. Ross's actions were not a veiled attempt to collect, recover or offset the discharged debt.

At the hearing, Mr. Ross apologized for his behavior, recognized that the debt has been discharged and stated that he would cease all contact with the Debtors. The Court in no way condones Mr. Ross's conduct. Moreover, Mr. Ross's apology does not relieve him of any potential state law claims that the Debtors may have against Mr. Ross. However, while Mr. Ross's alleged conduct and communications were rude, vulgar and perhaps harassing, they do not constitute an attempt to collect a discharged debt as set forth in § 524(a). As a consequence, the Court hereby denies the Motion for Contempt.

#