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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re: ) Case No. 04-33664  
)  
Eric M. Shondell, ) Chapter 7  
)  
Debtor. )  
) JUDGE MARY ANN WHIPPLE

**MEMORANDUM OF DECISION**  
**REGARDING AMENDED MOTION FOR RELIEF FROM STAY**

On August 12, 2004, Brad L. Binder (“Movant”), Administrator of the Estate of Brian L. Binder (“Binder”), filed an amended motion for relief from stay (the “Motion”) seeking relief for the purpose of pursuing a personal injury/wrongful death action against Eric M. Shondell (“Debtor”) and other named defendants in a state court action filed prepetition. [Doc. # 12]. A response to the Motion was filed by Debtor [Doc. # 22] as well as by state court defendants ATA Trucking, Inc., CitiCapital Commercial Corporation, f/k/a Associates Rental Systems, Sabahudin Velic and Fuad Beslija (the “ATA Defendants”) [Doc. # 15]. A hearing, attended by counsel for all parties in interest, was held on September 21, 2004. At that hearing, the parties were granted leave to file supplemental briefs in support of their positions. Supplemental briefs have since been filed by Movant [Doc. # 33], Debtor [Doc. # 32], and the ATA Defendants [Doc. # 34].

For the reasons that follow, the court will construe the Motion as a motion to interpret the discharge injunction imposed under 11 U.S.C. §524 and, as so construed, the Motion will be granted.

**BACKGROUND**

In September 2003, Movant filed a complaint in the Court of Common Pleas in Sandusky County, Ohio, against Debtor, the ATA Defendants and others for the personal injuries and wrongful death of Binder as a result of a multi-vehicle accident. The complaint alleges that Debtor was operating his vehicle

with a blood alcohol level over the legal limit in Ohio and that his negligence, as well as the negligence of the ATA Defendants and others, proximately caused Binder's injuries and death. [*See* Doc. 8, Ex. 1A]. Debtor was later convicted of driving under the influence of alcohol at the time of the accident. [*See* Adv. Pro. No. 04-3283, Doc. #1 Complaint ¶ 8, Doc. # 5 Answer ¶ 8].<sup>1</sup>

Debtor was uninsured at the time of the accident. On May 5, 2004, he filed a petition for relief under Chapter 7 of the Bankruptcy Code and, as a result, the state court action was stayed as against Debtor.

Thereafter, Movant filed an adversary proceeding in this court seeking damages for the personal injury and wrongful death claims alleged against Debtor and to determine dischargeability under 11 U.S.C. § 523(a)(9) of the debts allegedly owed by Debtor based on the allegations in the state court complaint.<sup>2</sup> [Adv. Pro. 04-3258]. Debtor denies that his vehicle collided with Binder's vehicle and thus denies causing or contributing to Binder's injuries and death.

Movant filed the instant motion for relief from the automatic stay seeking an order permitting him to proceed with the state court action against Debtor. Movant argues that the court lacks jurisdiction to decide the personal injury/wrongful death claim underlying the dischargeability issue and, in any event, that the interests of judicial economy would be served by permitting the state court action to proceed. Debtor opposes the motion, arguing that a dischargeability determination should be made by this court, not a state court. He further argues that he cannot afford to litigate the matter in state court and proceeding in this court would be more economical. The ATA Defendants also oppose the motion for relief. They have filed cross-claims against Debtor in the state court action and, as such, are potential creditors of Debtor.<sup>3</sup> They argue that judicial economy will best be served by this court determining the issues before it.

Shortly after the amended motion for relief from stay was filed, Debtor was granted a Chapter 7 discharge and the automatic stay was automatically terminated by operation of law. 11 U.S.C.

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<sup>1</sup> The court takes judicial notice of the contents of its case docket. Fed. R. Bankr. P. 9017; Fed. R. Evid. 201(b)(2).

<sup>2</sup> Although the adversary complaint names ten defendants and alleges fourteen causes of action, only five of which involve Debtor, on October 6, 2004, the court dismissed all non-debtor defendants from the case, finding its jurisdiction did not extend to claims against non-debtor defendants.

<sup>3</sup> The ATA Defendants also filed an adversary proceeding in this court, seeking to have any debt owed to them by Debtor declared nondischargeable under § 523(a)(9). [Adv. Pro. No. 04-3283].

§ 362(c)(2)(C).<sup>4</sup> Nevertheless, in this procedural context, the court construes Movant’s request for an order permitting him to proceed with the state court action against Debtor as a motion to interpret the discharge injunction imposed under § 524.

### LAW AND ANALYSIS

The filing of a bankruptcy petition operates as an automatic stay of all collection activities against the debtor, the debtor’s property and property of the estate. 11 U.S.C. § 362. The automatic stay serves two purposes. It provides a debtor with “breathing space,” that is, a period of time in which the debtor’s assets are protected so that his resources might be marshaled to satisfy existing obligations, and promotes the equitable distribution of assets among creditors. *In re Chari*, 262 B.R. 734, 736 (Bankr. S.D. Ohio 2001). But upon discharge, the stay is terminated and replaced with the discharge injunction imposed under § 524, the scope of which is not as broad as the automatic stay. *See Ruvacalba v. Munoz (In re Munoz)*, 287 B.R. 546, 554 n.8 (B.A.P. 9th Cir. 2002).

Section 524 provides in relevant part:

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

(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 section 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 [discharged] debt as a personal liability of the debtor, whether or not discharge of such debt is waived. . . .

11 U.S.C. § 524(a)(2); *see Munoz*, 287 B.R. at 555-56 (explaining that the phrase “any debt discharged” in § 524(a)(1) is the antecedent to the phrase “such debt” that is part of the definition of the scope of the injunction found in § 524(a)(2)). “The corollary is that the § 524(a)(2) discharge

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<sup>4</sup> That subsection provides in relevant part:

- (2) the stay of any other act under subsection (a) of this section continues until the earliest of –  
(A) the time the case is closed;  
(B) the time the case is dismissed; or  
(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

11 U.S.C. § 362(c)(2)(C).

injunction does not, by its straightforward terms, apply to protect the debtor from any debt that is not discharged.” *Id.* at 556. The discharge injunction furthers a fundamental goal of bankruptcy law by protecting the “fresh start” obtained as a result of a debtor’s discharge. While the injunction is a legal consequence of the order granting a discharge, it “casts a wide shadow, with a large penumbra” that results in cautious litigants seeking clarification as to whether the injunction applies to their particular situation.

In this case, the court must decide whether the discharge injunction precludes Movant from pursuing his state court action in which Debtor is a co-defendant in order to recover a debt as a personal liability of Debtor for the personal injuries and death of Binder. Debtor’s discharge bars Movant’s state action only if it is an action to collect a *discharged debt* as a personal liability of Debtor. *See* 11 U.S.C. § 524(a)(2). While the court has found no case on all fours with the facts of this case, it finds instructive cases addressing the applicability of the discharge injunction to a creditor pursuing an action against a debtor, nominally, for the sole purpose of establishing liability as a prerequisite to proceeding against a third party, usually the debtor’s liability insurer. Case law makes clear that, although the debtors had been discharged from any personal liability for the debt, the discharge injunction does not preclude such actions since the creditor was not attempting to recover a discharged debt as a personal liability of the debtor but rather was attempting to recover from a third party. *See, e.g., Hendrix v. Page (In re Hendrix)*, 986 F.2d 195, 197 (7th Cir. 1993); *Walker v. Wilde (In re Walker)*, 927 F.2d 1138, 1142 (10th Cir. 1991); *In re Doar*, 234 B.R. 203, 205 (Bankr. N.D. Ga. 1999) (collecting cases); *Munoz*, 287 B.R. at 555.

In *Munoz*, the court considered an additional issue relevant to the facts of this case. In that case, the creditor sought to pursue an action before the California Workers’ Compensation Appeals Board (“WCAB”) against the debtor in his capacity as an uninsured employer in order to obtain payment from the state Uninsured Employers Fund (“UEF”). *Id.* at 549. Although the court found that the action was not an action directed at the personal liability of the debtor, it also considered whether it made any difference to the applicability of the discharge injunction that there was a potential that the WCAB judgment would precipitate a nondischargeable debt that Debtor would owe to UEF. The court concluded that it did not, reasoning that “the § 524(a)(2) discharge injunction does not protect a debtor from an action to determine the debtor’s liability on a nondischargeable debt.” *Id.* at 555-56.

Applying the logic of the above cases to the facts of this case, the court concludes that the

discharge injunction does not preclude Movant from pursuing his state action. The debt alleged by Movant in the state court complaint is a debt for Binder's personal injuries and death as a result of Debtor's negligence while operating his vehicle with a blood alcohol level over the legal limit in Ohio. Such a debt is excepted from a Chapter 7 discharge under § 523(a)(9).<sup>5</sup> Unlike the cases discussed above, Movant is seeking to impose personal liability on Debtor. Nevertheless, he is not attempting to recover a *discharged debt* as a personal liability. As such, the discharge injunction does not apply.

In reaching this conclusion, the court has considered financial hardship on Debtor in defending against the claims in state court as he was uninsured at the time of the accident. Although some courts have required a creditor attempting to collect from a third party to reimburse Debtor for the cost of defending as a nominal plaintiff in order to avoid any negative economic consequence, those cases are distinguishable as they involve actions to recover on discharged debts. *See, e.g., Perez v. Cumberland Farms, Inc.*, 213 B.R. 622, 624 (D. Mass. 1997). *But see In re Nkongho*, 59 B.R. 85, 86 (Bankr. D. N.J. 1986) (rejecting argument that cost of defending tort action is sufficient to justify the enjoining of litigation against debtor). Here, Movant seeks to proceed against Debtor on a *nondischargeable* debt. The § 524(a)(2) discharge injunction does not protect him from such an action. *See Munoz*, 287 B.R. at 556; *Slali v. Ruiz (In re Slali)*, 282 B.R. 225, 231 (C.D. Cal. 2002).

Moreover, Movant has filed an adversary proceeding in this court to determine dischargeability of the debt allegedly owed by Debtor to the Binder estate under § 523(a)(9). [Adv. Pro. No. 04-3258]. The Motion now before the court raises significant issues relating to jurisdiction and abstention in that proceeding. While the court finds it more appropriate to address those issues within the adversary case itself if necessary,<sup>6</sup> to the extent that the court finds abstention proper, any

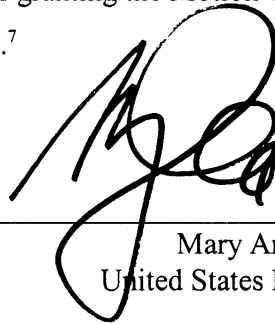
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<sup>5</sup> Section 523(a)(9) provides that a discharge under § 727 does not discharge an individual debtor from any debt "for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance." 11 U.S.C. § 523(a)(9). A person is legally "intoxicated" within the meaning of § 523(a)(9) if he violates Ohio statutes proscribing driving with a prohibited concentration of alcohol. *Allstate Ins. Co. v. Humphrey (In re Humphrey)*, 102 B.R. 629, 634 (Bankr. S.D. Ohio 1989). Unlike §§ 523(a)(2), (a)(4) and (a)(6), § 523(a)(9) is self-executing and is not dependent upon a creditor obtaining a determination by the bankruptcy court or any other court that the debt is non-dischargeable. *See* 11 U.S.C. § 523(c)(1); *see also* Criminal Victims Protection Act of 1990, Pub. L. No. 101-581 (Nov. 15, 1990) (amending § 523(a)(9) by removing the earlier requirement that the debt be evidenced by a judgment to be nondischargeable). To the extent a party seeks such a determination, state courts have concurrent jurisdiction to decide dischargeability issues under § 523(a)(9). *See In re Fearn*, 295 B.R. 240, 241-42 (Bankr. S.D. Ohio 2003).

<sup>6</sup> The court notes, however, that Movant has not yet filed a motion to abstain in the adversary proceeding.

detriment to Debtor's fresh start will be the same whether Debtor defends against Movant's claims in this court or in state court. Causation of Binder's death, and the entire circumstances surrounding the accident and the persons involved in it, would have to be litigated in either court. If Debtor did not hit Binder's vehicle, or if he did and Binder was already dead, then there is no debt to Movant for death or personal injury caused by Debtor's operation of a motor vehicle, whether he was intoxicated or not. *See Huffer v. Fearn (In re Fearn)*, 297 B.R. 107,110 (Bankr. S.D. Ohio 2003). Extensive discovery on these issues will occur in either court. Expert witnesses and their attendant high costs will be necessary, in whichever court causation is litigated. Under these circumstances, the discharge injunction would not serve its purpose of protecting any fresh start resulting from Debtor's discharge.

For the foregoing reasons, a separate order granting the Motion will be entered by the court in accordance with this memorandum of decision.<sup>7</sup>



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Mary Ann Whipple  
United States Bankruptcy Judge

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<sup>7</sup> The ATA Defendants also filed cross-claims against Debtor in the state court action. That state court pleading is not before this court and this opinion does not address the applicability of the discharge injunction as it relates to the ATA Defendants pursuit of their cross-claims.