UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP No. MW 02-063

Bankruptcy Case No. 01-43020-HJB
Adversary Proceeding No. 01-4326-HJB

IN RE: YURIY KHITER,
Debtor.

STACEY BLAINE,
Appellant,

v.

YURIY KHITER a/k/a
YURI KHITER,
Appellee.

Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Henry J. Boroff, U.S. Bankruptcy Judge)

Before
LAMOUTTE, DE JESÚS, and VAUGHN,
U.S. Bankruptcy Appellate Panel Judges

David Berman, Esq.,
on brief for the Appellant.

Yuriy Khiter, *pro se*,
on brief for the Appellee.

November 5, 2003

Per Curiam.

Stacey Blaine (the "Appellant") appeals from orders of the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court") entered on September 10 and 19, 2002, denying her "Motion for Execution and Other Relief" and reconsideration thereof (the "Orders"). For the reasons set forth below, the Orders of the Bankruptcy Court are affirmed.

I. Background

In December 1999, the Appellant commenced a civil action in Suffolk Superior Court against the Appellee, his employer, and the principals of the employer stemming from an alleged sexual assault committed by the Appellee on the Appellant. Additionally, the Appellee was criminally prosecuted and entered a plea of guilty on two charges of indecent assault on July 19, 2000.[1] App. at 94.

On May 3, 2001, the Appellee filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code (the "Code")[2] and the civil action was stayed. On August 9, 2001, the Appellant filed a complaint to determine the dischargeability of the Appellee's obligation to her. App. at 1. At the conclusion of the trial held on January 17, 2002, the Bankruptcy Court determined that the debt in the amount of $28,000, a figure which the parties had agreed upon, *inter alia*, prior to trial, was nondischargeable. Further, the Bankruptcy Court found that a sexual assault occurred and that it was "a willful and malicious injury to [the Appellant] under the provisions of 523(a)(6)." App. at 302.

---

[1] The Appellee filed a Motion for a New Trial, which was denied by the Boston Municipal Court on March 8, 2001. App. at 98.

[2] Unless otherwise noted, all statutory references herein are to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. § 101, *et seq.*

On August 12, 2002, the Appellant filed a Motion for Execution and other relief (the "Motion for Execution"). App. at 305. It was entered on the docket on September 10, 2002. See id. at 318, Doc. No. 20. The Bankruptcy Court denied the Motion for Execution on September 10, 2002, holding that its "jurisdiction was limited to the finding of nondischargeability" and that "these proceedings should be brought in state court." Id. at 318, Doc. No. 21. The Appellant moved to amend the order of denial and for reconsideration (the "Motion for Reconsideration") on September 11, 2002. App. at 307. On September 19, 2002, the Bankruptcy Court denied the Motion for Reconsideration. See id. at 318, Doc. No. 23. The Appellant filed a notice of appeal on September 24, 2002. App. at 313.

II. Jurisdiction

The United States Bankruptcy Appellate Panel for the First Circuit (the "Panel") may hear appeals "from final judgments, orders, and decrees" pursuant to 28 U.S.C. § 158(a)(1) or, "with leave of the court, from interlocutory orders and decrees" pursuant to 28 U.S.C. § 158(a)(3). Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). "A final judgment is one which disposes of the whole subject, gives all the relief that was contemplated, provides with reasonable completeness, for giving effect to the judgment and leaves nothing to be done in the cause save superintend, ministerially, the execution of the decree." American Colonial Broad. Corp., 758 F.2d 794, 801 (1st Cir. 1985) (citing City of Louisa v. Levi, 140 F.2d 512, 514 (6th Cir. 1944)). The instant appeal arises from the final orders of the Bankruptcy Court denying the Appellant's Motion for Execution and reconsideration thereof.

III. Standard of Review

Generally, the Panel evaluates the Bankruptcy Court's findings of fact pursuant to the "clearly erroneous" standard of review and its conclusions of law de novo. Grella v. Salem Five Cent. Savings Bank, 42 F.3d 26, 30 (1st Cir. 1994); see also Fed. R. Bankr. P. 8013; Palmacci v. Umpierrez, 121 F.3d 781, 785 (1st Cir. 1997).

IV. Discussion

Bankruptcy courts have exclusive jurisdiction to determine the dischargeability of claims arising under § 523(a)(6). 11 U.S.C. § 523(c)(1); 28 U.S.C. § 1334(a) and (b). In the present case, the Bankruptcy Court found that the Appellee's obligation to the Appellant in the amount of $28,000 was nondischargeable, but denied the Appellant's subsequent Motion for Execution for lack of jurisdiction. App. at 304. The Bankruptcy Court did not err in denying the Motion for Execution and the Motion for Reconsideration because it did not have subject matter jurisdiction over the underlying cause of action. Pursuant to § 157(b)(5) of Title 28, bankruptcy courts may not hear personal injury tort or wrongful death actions. 28 U.S.C § 157(b)(5). Accordingly, the Bankruptcy Court lacked jurisdiction to enter a money judgment in the underlying sexual assault case.

Additionally, the Panel does not have to reach the broader question of whether bankruptcy courts have the authority to enter money judgments in nondischargeability proceedings.[3] There are courts that hold that dischargeability and liability are connected because

[3] Although the First Circuit has not specifically addressed the issue, bankruptcy courts within the First Circuit have reached different conclusions regarding the authority to enter money judgments. Compare American Express Centurion Bank v. Losanno (In re Losanno), 291 B.R. 1 (Bankr. D.Mass. 2003) (holding that the bankruptcy court does not have the authority to enter a money judgment on the judgment of nondischargeability) and Barrows v. Illinois Student Assistance Comm'n (In re Barrows), 182 B.R. 640

a nondischargeability proceeding is a core proceeding and "it is impossible to separate the determination of dischargeability function from the function of fixing the amount of the non-dischargeable debt." Cowen v. Kennedy (In re Kennedy), 108 F.3d 1015, 1017-18 (9th Cir. 1997) (quoting Snyder v. Devitt (In re Devitt), 126 B.R. 212, 215 (Bankr. D. Md. 1991); see also Lang v. Lang (In re Lang), 293 B.R. 501 (B.A.P. 10th Cir. 2003); Porges v. Gruntal & Co. (In re Porges), 44 F.3d 159, 164 (2d Cir. 1995); Longo v. McLaren (In re McLaren), 3 F.3d 958, 966 (6th Cir. 1993); N.I.S. Corp. v. Hallahan (In re Hallahan), 936 F.2d 1496, 1508 (7th Cir. 1991); Baker v. Friedman (In re Friedman), No. 02-1323, 2003 WL 22358838, at *2 (Bankr. D.Mass. October 3, 2003). However, none of those cases involved underlying matters within the scope of 28 U.S.C. § 157(b)(5), and are, therefore, not applicable to the present appeal. See id. Further, those courts relied on § 157(b)(1) of Title 28 to find jurisdiction for entering money judgments, which is not applicable in the present matter. See id.

V. Conclusion

For the reasons set forth above, the Panel finds that the Bankruptcy Court did not err in holding that its jurisdiction was limited to the finding of nondischargeability. Accordingly, the Bankruptcy Court's Orders are **AFFIRMED**.

(Bankr. D.N.H. 1994) with Baker v. Friedman (In re Friedman), No. 02-1323, 2003 WL 22358838, at *2 (Bankr. D.Mass. October 3, 2003) (finding that bankruptcy courts do have jurisdiction to enter money judgments because § 157(b) of Title 28 provides that "bankruptcy judges may hear and determine . . . all core proceedings . . . and may enter appropriate judgments" and that such a determination promotes judicial economy and enables creditors to liquidate their claims for purposes of distribution).