

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)
)
JAMES NEWELL CHARLES,) Case No. 6:11-bk-14989-KSJ
) Chapter 7
Debtor.)
_____)

JEFFREY ATWATER, in his official)
capacity as Florida Chief Financial officer,)
and the STATE RISK MANAGEMENT)
TRUST FUND,)
)
Plaintiffs,)
vs.) Adversary No. 6:12-ap-00011-KSJ
)
JAMES NEWELL CHARLES,)
)
Defendant.)
_____)

MEMORANDUM OPINION GRANTING PLAINTIFFS' MOTION FOR ENTRY OF AN ORDER REGARDING FURTHER STATE COURT PROCEEDINGS

James Newell Charles, a lawyer, is a Chapter 7 Debtor and Defendant in this adversary proceeding. For years he served as counsel to Michael Dupont (“Dupont”) in a civil rights lawsuit involving the Plaintiffs, agents of the State of Florida, who allegedly were responsible for a so-called botched sting operation against Dupont.¹ In 2002, the Defendant, on Dupont’s behalf, entered a *Coblentz* Agreement² (“Agreement”) with the Plaintiffs.³ But in 2008, the Florida

¹ *Gallagher v. Dupont*, 918 So. 2d 342, 344 (Fla. 5th DCA 2005).

² Under Florida law, a “*Coblentz* agreement” is an agreement between an insured and a tort-plaintiff with three distinct elements: (1) a judgment against the insured, establishing its liability and amount of damages; (2) a covenant not to execute, given by the tort-plaintiff, freeing the insured from any obligation to pay the judgment amount, the only source of recoverable funds pursuant to the agreement being the carrier; and (3) an assignment by the insured of its rights against the carrier to the tort-plaintiff. *Coblentz v. Am. Sur. Co. of New York*, 416 F.2d 1059 (5th Cir. 1969). It remains an accurate explication of Florida law. *GEICO Gen. Ins. Co. v. Pruitt*, 122 So. 3d 484, 486 n.1 (Fla 3d DCA 2013).

³ Doc. No. 1, Exhibit B at 3.

Circuit Court for the Seventh Judicial Circuit (“Circuit Court”) found the Agreement unreasonable, procured partly by the Defendant’s fraud and bad faith, and voided the agreement.⁴ The Florida Fifth District Court of Appeals (“Appellate Court”) affirmed.⁵ Then in July 2011, the Circuit Court held Dupont and the Defendant jointly and severally liable for attorney fees and costs of \$407,363.95.⁶ Defendant filed his Chapter 7 bankruptcy petition on October 3, 2011.⁷

Defendant appealed the attorney fee judgment against him. Plaintiffs sought sanctions on the appeal under Section 57.105, Florida Statutes, mainly arguing the Defendant attempted to reargue issues he already argued and lost in the prior appeal.⁸ On March 19, 2013, the Appellate Court affirmed the Circuit Court’s final judgment and granted the Plaintiffs’ motion for sanctions.⁹ The appeals court remanded the matter back to the Circuit Court to determine the amount of reasonable attorney fees awardable to them for the appeal.¹⁰

Plaintiffs, through their present motion,¹¹ ask for an order determining that any sanctions the Circuit Court awards against the Defendant as directed by the Appellate Court’s remand order¹² are properly classified as post-petition and not affected by the Defendant’s discharge, despite their tangential connection to the Defendant’s pre-petition misconduct. The Defendant’s response does not address the legal issues raised by the Plaintiffs’ request.¹³ For the reasons stated below, the Court grants the Plaintiffs’ motion.

The issue is whether the attorney fee award to be liquidated by the Circuit Court qualifies as pre-petition “claim” and is subject to the Defendant’s discharge. Because § 727(b) “discharges

⁴ *Id.* at 16-17.

⁵ Doc. No. 1, Exhibit C.

⁶ Doc. No. 1, Exhibit A at 4.

⁷ Main Case No. 6:11-bk-14989-KSJ, Doc. No. 1.

⁸ Doc. No. 33 at 4.

⁹ Doc. No. 33 at 4–5.

¹⁰ Doc. No. 33, Exhibit 1.

¹¹ Motion for Entry of an Order with Respect to Further State Trial Court Proceedings against Defendant/Debtor for his Post-Petition Sanctionable Misconduct on State Court Appeal (Doc. No. 33).

¹² Doc. No. 33, Exhibit 1.

¹³ Doc. No. 49.

the [chapter 7] debtor of all debts that arose before the date” of the petition’s filing,¹⁴ determining whether a claim is pre-petition or post-petition is critical.¹⁵ The Bankruptcy Code¹⁶ defines a “claim” as either “[a] right to payment” or “[a] right of equitable remedy for breach of performance if such breach gives rise to a right to payment,” whether or not such a right to payment “is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.”¹⁷ To effectuate the Code’s central objectives, courts generally construe post-petition obligations clearly related to a debtor’s pre-petition activities as pre-petition “claims.”

In *Epstein v. Official Comm. of Unsecured Creditors of Estate of Piper Aircraft Co. (In re Piper Aircraft Co.)*,¹⁸ the Eleventh Circuit crafted a test applicable for determining whether a post-petition liability constitutes a pre-petition “claim”: (1) Does a pre-petition relationship exist, such as contact, exposure, or privity between a claimant and the debtor?; and (2) Is the basis for liability the debtor’s pre-petition conduct?¹⁹

Plaintiffs concede that their extensive history of litigation against the Defendant satisfies the pre-petition relationship prong.²⁰ Their main argument goes to the second *Piper* prong—that the Defendant’s misconduct which gave rise to the sanctions occurred post-petition and did not share such a connection with his separate, pre-petition conduct to be classified as a “claim” under § 101(5). “In deciding whether a claim arose pre-petition or post-petition, the court’s ‘focus

¹⁴ 11 U.S.C. §§ 727(b) & 524(a)(2).

¹⁵ *United States v. LTV Corp. (In re Chateaugay Corp.)*, 944 F.2d 997, 1003 (2d Cir. 1991).

¹⁶ All references to the Bankruptcy Code refer to 11 U.S.C. § 101 *et. seq.*

¹⁷ 11 U.S.C. § 101(5)(A) & (B).

¹⁸ 58 F.3d 1573 (11th Cir. 1995).

¹⁹ *Epstein v. Official Comm. of Unsecured Creditors of Estate of Piper Aircraft Co. (In re Piper Aircraft Co.)*, 58 F.3d 1573, 1576–77 (11th Cir. 1995); *see also In re Hall*, 454 B.R. 230, 236 (Bankr. N.D. Ga. 2011) (explaining in more general terms the two prongs of the *Piper* test). Although the *Piper* test specifically addressed defective manufacturing liabilities, courts in this circuit have applied it as a general definition of a “claim” for purposes of § 101. *See, e.g., In re Bill Heard Enters.*, 400 B.R. 813, 824 (Bankr. N.D. Ala. 2009); *In re SunCruz Casinos, LLC*, 377 B.R. 741, 745 (Bankr. S.D. Fla. 2007); *In re Pan American Hosp. Corp.*, 364 B.R. 839, 844-49 (Bankr. S.D. Fla. 2007).

²⁰ Doc. No. 33 at 6.

should be on the time when the act giving rise to the claim was performed.”²¹ Under *Piper*, a right to payment that arises post-petition constitutes a pre-petition claim only if the conduct from which the purported injury arose occurred pre-petition.²² An injury might manifest itself post-petition and nonetheless be categorized as a pre-petition claim, but the specific actions giving rise to liability must still have been performed pre-petition.²³ In this case, so long as the basis for the sanctions is post-petition conduct distinct from the Defendant’s other pre-petition misconduct, the resulting attorney fee award cannot be considered a “claim” and will not be subject to the discharge injunction in § 727(b).

Based on the Plaintiffs’ uncontroverted papers and the explicit language of the order of the Fifth District Court of Appeal, the prospective sanctions are not a pre-petition “claim” under the *Piper* test. The sanctions award is based on the Defendant’s legal arguments on appeal, namely his attempt to reargue issues already determined in a prior appeal. The first instance the Defendant asserted these arguments was in his appellate brief filed on July 30, 2012, nearly ten months after the petition date.²⁴ In his post-petition appeal, the Defendant engaged in new punishable conduct solely related to the Defendant’s voluntary post-petition assertions he made in his unsuccessful appeal.

The fact that the Defendant’s contentions were similar, if not identical, to the ones previously and repeatedly asserted in any pre-petition proceeding is irrelevant. Defendant willfully resubmitted and reargued them in his post-petition papers and any additional sanctions are attributable to these post-petition actions. In “choos[ing] to return to the fray,” the Defendant embarked upon a post-petition course distinguishable from any pre-petition deed, voluntarily

²¹ *In re Pan Am. Hosp. Corp.*, 364 B.R. 839, 843 (Bankr. S.D. Fla. 2007) (citing *In re Highland Group, Inc.*, 136 B.R. 475, 480-81 (Bankr. N.D. Ohio 1992)).

²² *In re Piper Aircraft Co.*, 58 F.3d at 1577; see also, *Wright v. Owens Corning*, 679 F.3d 101, 106 (3d Cir. 2012).

²³ See, e.g., *Oneida Ltd. v. Pension Ben. Guar. Corp. (In re Oneida Ltd.)*, 383 B.R. 29, 37 (Bankr. S.D.N.Y. 2008); *In re Hoffinger Indus., Inc.*, 307 B.R. 112, 120 (Bankr. E.D. Ark. 2004); *UNR Indus. v. Walker (In re UNR Indus.)*, 224 B.R. 664, 671-72 (Bankr. N.D. Ill. 1998).

²⁴ Defendant’s brief also was filed after the discharge, which was entered on January 1, 2012. (Main Case No. 6:11-bk-14989-KSJ, Doc. No. 35.)

assuming the risk inherent in such deliberate acts, including the costs.²⁵ The Circuit Court will now require the Defendant to pay for the consequences of his post-petition actions he voluntarily undertook during the appeal.²⁶ These additional sanctions are separate and distinct from the Plaintiffs' other pre-petition "claim" and are not subject to the discharge injunction.

Accordingly, the Plaintiffs' Motion for Entry of an Order with Respect to Further State Trial Court Proceedings against Defendant/Debtor for his Post-Petition Sanctionable Misconduct on State Court Appeal is granted. A separate order consistent with this Memorandum Opinion will be entered simultaneously.

DONE AND ORDERED in Orlando, Florida, April 15, 2014.



KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

Cheryl Marie Brittle, Attorney for Plaintiffs, is directed to serve a copy of this Memorandum Opinion on interested parties and file a proof of service with the Court confirming such service within three days.

²⁵ *Boeing N. Am., Inc. v. Ybarra (In re Ybarra)*, 424 F.3d 1018, 1026 (9th Cir. 2005); *accord Shure v. Vermont (In re Sure-Snap)*, 983 F.2d 1015, 1018 (11th Cir. 1993).

²⁶ Doc. 33, Exhibit 1.