

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3: 13-bk-4191-PMG

Henri Antonie Erkelens, III,

Debtor.

Chapter 11

ORDER ON DEBTOR'S OBJECTION TO CLAIM FOUR (4)

THIS CASE came before the Court for preliminary hearing to consider the Debtor's Objection to Claim Four (4) of Richard W. Gannett. (Doc. 74).

Generally, a determination that a debt is dischargeable precludes the re-determination of the issue in any subsequent case filed by the same debtor.

In this case, Claim Number 4 is based on the assignment of a prepetition Judgment that was entered against the Debtor in 2008. The Judgment debt was determined to be dischargeable in a prior bankruptcy case filed by the Debtor, and the debt was discharged in the prior case under §727 of the Bankruptcy Code. Consequently, the Judgment debt is not enforceable in the Debtor's current Chapter 11 case, and the Debtor's Objection to the Claim should be sustained.

Background

The Debtor was previously married to Tammie K. Erkelens. In 2006, a Final Judgment dissolving the marriage was entered by the Circuit Court for St. Johns County, Florida.

On or about March 7, 2008, it appears that the state court in the divorce action entered a monetary Judgment in favor of Tammie K. Erkelens and against the Debtor in the amount of \$265,500.00. The Judgment was based upon certain obligations related to the dissolution of marriage.

On March 11, 2008, the Debtor filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts.

On July 18, 2008, Tammie K. Erkelens filed a Complaint in the Debtor's Massachusetts bankruptcy case to determine the dischargeability of the Judgment debt under §523(a)(5) and §523(a)(15) of the Bankruptcy Code. (Doc. 74, Exhibit B). Richard W. Gannett (Gannett) was Tammie K. Erkelens' attorney in the dischargeability action.

It appears that the dischargeability action was scheduled for trial.

On October 5, 2009, the Bankruptcy Court in Massachusetts entered an Order on Tammie K. Erkelens' Complaint. The Order provides in its entirety:

Plaintiff failed to appear and prosecute this adversary proceeding. Plaintiff is hereby defaulted. Judgment for Defendant on all Counts.

(Doc. 74, Exhibit C). Tammie K. Erkelens did not seek to reconsider or appeal the Order.

The Debtor's Chapter 11 case in Massachusetts ultimately was converted to a case under Chapter 7, and the Debtor received a Chapter 7 discharge on September 22, 2010. (Doc. 74, Exhibit D).

On July 8, 2013, the Debtor filed the Chapter 11 case that is currently before this Court.

On November 12, 2013, Gannett filed Proof of Claim Number 4 in the Debtor's current Chapter 11 case. The Claim was filed as an unsecured priority claim in the amount of \$132,750.00, and states that it is based on an "assignment of judgment." According to a Mediated Settlement Agreement

attached to the Claim, Gannett received a 50% interest in the state court Judgment entered in favor of Tammie K. Erkelens in the divorce action in 2008.

On July 29, 2014, the Debtor filed an Objection to Gannett's Claim. (Doc. 74). The Debtor primarily asserts that the Judgment debt was declared dischargeable by virtue of the Order entered in his prior bankruptcy case, and that the debt was discharged in the prior case.

Discussion

Generally, a dischargeability determination in a prior bankruptcy case precludes the re-determination of the issue in any subsequent case filed by the same debtor. In re Garcia, 313 B.R. 307, 310 (9th Cir. BAP 2004). See also In re Sullivan, 2011 WL 6148709, at 5 (Bankr. S.D. Ala.) (A dischargeability determination in a previous case bars redetermination of that issue in a subsequent case.).

Additionally, the general rule of preclusion may apply in later cases, even if the prior dischargeability determination involved a default judgment. See In re Montgomery, 2006 WL 2641697, at 2 (5th Cir.), and In re Smith, 401 B.R. 733, 737 (Bankr. D. Md. 2008) (A dischargeability determination has preclusive effect, even if the prior judgment was obtained upon a default.).

Finally, the general rule of preclusion may apply in later cases, even if the determination involved a debt that was incurred by the debtor in connection with a divorce. See In re Milford, 281 B.R. 742 (Bankr. M.D. Fla. 2002), and In re Hight, 2001 WL 1699694 (Bankr. M.D.N.C.) (The dischargeability determination regarding a marital obligation has preclusive effect, where the determination was made by a court with jurisdiction over the parties and the subject matter.).

Tammie K. Erkelens filed a Complaint in the Debtor's prior bankruptcy case to determine the dischargeability of the Judgment debt owed by the Debtor. The Complaint contained two Counts: (1)

Count I was a dischargeability action under §523(a)(5) of the Bankruptcy Code, and (2) Count II was a dischargeability action under §523(a)(15) of the Bankruptcy Code. (Doc. 74, Exhibit B).

An Order was entered in the dischargeability proceeding on October 5, 2009, and the Order indicates that the proceeding had come before the Court for trial. Pursuant to the Order, a Judgment was entered in favor of the Debtor "on all Counts" of the dischargeability Complaint, based on Tammie K. Erkelens' default in the proceeding. (Doc. 74, Exhibit C).

The dischargeability of the Judgment debt was adjudicated, and the Debtor received his discharge under §727 of the Bankruptcy Code in the prior case on September 22, 2010. Section 524 of the Bankruptcy Code, which governs the effect of a discharge, provides that a discharge "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" of the Bankruptcy Code. 11 U.S.C. §524(a)(1).

The Claim filed by Gannett in the Debtor's current Chapter 11 case is based on an assignment of the Judgment that was entered against the Debtor in 2008. The Judgment debt was determined to be dischargeable in the prior case filed by the Debtor, and the debt was discharged in the prior case under §727 of the Bankruptcy Code. The dischargeability determination may not be relitigated the current case, even though the determination was made upon a default, and even though the determination involved a debt that was incurred in connection with a divorce.

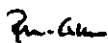
Consequently, the Judgment debt is not enforceable in the Debtor's current Chapter 11 case pursuant to §524 of the Bankruptcy Code, and the Debtor's Objection to the Claim should therefore be sustained.

Accordingly:

IT IS ORDERED that the Debtor's Objection to Claim Four (4) of Richard W. Gannett is sustained, and Claim Number 4 is disallowed.

DATED this 12 day of September, 2014.

BY THE COURT



PAUL M. GLENN
United States Bankruptcy Judge