

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:01-bk-01407-ABB
Chapter 13

JOHN EARL STEELE, II,

Debtor.

ORDER

This matter came before the Court on the Motion to Reopen Bankruptcy for Sanctions Against Jack A. Davis for Violation of the Discharge Injunction (“Motion”)¹ and Amended Motion to Reopen Bankruptcy to Determine Dischargeability of Creditor Jack A. Davis & Memorandum of Law (“Amended Motion”)² filed by John Earl Steele, II, the reorganized Debtor herein (“Debtor”) against Jack A. Davis herein (“Davis”). A hearing was held on March 06, 2007 at which the Debtor, counsel for the Debtor, and counsel for Davis appeared. The parties were granted seven days to submit supplemental briefs in support of their positions. The Court, upon motion of the Debtor, extended the deadline to March 26, 2007.³ The Court makes the following findings and conclusions after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

Case Background

Davis filed a complaint on November 15, 2000 against the Debtor, Case No. 2000-CA-003219, in the Circuit Court of the Fifth Judicial Circuit in Lake County, Florida to collect on a promissory note (“State Court Action”). The promissory note is secured by collateral of a boat business. The debt is evidenced by a perfected security interest in the collateral and a UCC-1 financing statement recorded in the public records of Lake County, Florida.⁴ The Debtor filed this voluntary Chapter 13 case on February 26, 2001 (“Petition Date”). The Debtor did not list Davis as a creditor on his schedule of liabilities. The creditors of the Debtor were served with and received proper notice of his bankruptcy filing by first class mail on February 28, 2001.⁵ Davis

did not receive notice as he was not a listed creditor and he was not included on the mailing matrix.⁶

The Debtor filed his Chapter 13 Plan (“Plan”) on March 13, 2001.⁷ The Plan did not provide payments to Davis nor was Davis included in the mailing matrix of the Plan. The Debtor amended his Plan on several occasions but Davis was consistently omitted. The Debtor’s Plan as amended was confirmed on March 28, 2003.⁸ Confirmation of the Debtor’s Plan gave rise to a discharge injunction protecting the Debtor from any act to collect a discharged debt.

The Debtor filed an Amendment to Schedule D – Creditors Holding Secured Claims (“Amended Schedule”)⁹ on February 3, 2006, adding Davis to his list of secured creditors. The Amended Schedule reflects Davis holds a \$28,999.85 secured claim pursuant to a security agreement covering business collateral. Davis received proper notice of the Amended Schedule and he timely filed a Proof of Claim (Claim No. 30) on March 13, 2006.¹⁰ The Debtor did not amend his Plan to comport with the Amended Schedule. Davis did not receive any payments through the Debtor’s Plan.

Davis indicated on his Proof of Claim he had not received any notices from the Court regarding the Debtor’s bankruptcy case. The Debtor contends in his Amended Motion Davis received notice of the bankruptcy prior to confirmation, but the Debtor has not presented any proof of such notice and his various Certificates of Service and mailing matrixes reflect otherwise. He references an Attached Exhibit A, a facsimile cover sheet dated May 3, 2001, but the exhibit is inconclusive and does not establish proper notice was provided. The Debtor did not inform the Court of Davis’s claim prior to filing his Amended Schedule and he has an ongoing duty to inform the Court of any additional creditors.

The Debtor received a discharge on March 21, 2006 upon completion of his Plan.¹¹ His case was closed on September 12, 2006. The Debtor did not further amend his Plan prior to his discharge to include Davis and Davis did not receive any payments pursuant to the Debtor’s Plan.

Davis filed a Motion for Summary Judgment on October 23, 2006 in the State Court Action. He obtained a Final Judgment against the Debtor in the amount of \$49,368.18 on December 4, 2006. The Debtor filed his

¹ Doc. No. 158.

² Doc. No. 166.

³ Doc. Nos. 163 & 164.

⁴ Claim No. 25.

⁵ Doc. No. 4.

⁶ Id.

⁷ Doc. No. 8.

⁸ Doc. No. 73.

⁹ Doc. No. 106.

¹⁰ Doc. No. 107. “Said creditors . . . may also file a proof of claim through March 13, 2006.”

¹¹ Doc. No. 115.

Motion requesting the Court to reopen his case and enforce the discharge injunction against Davis. The Debtor contends Davis's State Court Action is for recovery of a debt that was discharged in the Debtor's bankruptcy case.

Conclusions

Confirmation of the Debtor's Plan gives rise to a discharge injunction protecting the Debtor from any act to collect a *discharged* debt. 11 U.S.C. § 524(a) (*emphasis added*). The provisions of the confirmed Plan bind the Debtor and all creditors. 11 U.S.C. § 1141(a). The Bankruptcy Code discharge injunction prevents creditors from taking any action to attempt to collect any discharged debts. "[I]t protects the debtor from a subsequent suit in a state court, or any other act to collect, by a creditor whose claim had been *discharged* in the title 11 case." 4 COLLIER ON BANKRUPTCY ¶ 524.02, at 524-14.7 (15th ed. rev. 2005) (*emphasis added*). Section 524 "thus embodies the 'fresh start' concept of the bankruptcy code." Hardy By and Through Internal Revenue Serv. v. United States (In re Hardy), 97 F.3d 1384, 1388-89 (11th Cir. 1996).

". . . [A]s soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant the debtor a discharge of all debts *provided for by the plan* . . ." pursuant to 11 U.S.C. Section 1328 (*emphasis added*). The only debts discharged pursuant to 11 U.S.C. Section 1328 are those provided for by the plan. The Debtor cites in his Amended Motion In re Moore, 247 B.R. 677 (Bankr. W.D. Mich. 2000) which holds "an omitted creditor in an already confirmed plan may still be able to be included in the plan (i.e., receive a distribution and be subject to the Section 1328 discharge) by doing nothing more than filing a late proof of claim."¹² One very important distinction exists between Moore and the present case. The creditor in Moore was provided for in the debtor's plan of reorganization and therefore the debts were dischargeable.¹³ The debtor specifically provided in his schedule amendments a provision "AMENDMENT TO CHAPTER 13 PLAN" and he further designated which category and base amount the creditors should receive pursuant to the plan.¹⁴ Davis's claim against the Debtor's estate was not provided for in the Debtor's Plan and the Debtor did not amend his Plan to comport with his Amended Schedule in the present case.

The court in Moore further stands for the position 11 U.S.C. Section 1329 does not permit post-

confirmation plan modifications.¹⁵ "That Congress did not give the debtor similar latitude with respect to post-confirmation modification strongly suggests that Congress intended post-confirmation modifications to be limited to the three categories enumerated in Section 1329."¹⁶ "Whether a particular plan permits the inclusion of untimely claims depends upon its specific provisions . . ."¹⁷ The Debtor's Plan does not offer a provision addressing the inclusion of an untimely post-confirmation plan amendment. The amendment would not be allowed when considering the Moore decision even if the Debtor had properly amended his Plan to include Davis.

The Debtor's debt to Davis was not discharged in the Debtor's bankruptcy. He did not list Davis as a creditor until he filed his Amended Schedule five years after the Petition Date. Davis did not receive notice of the Debtor's bankruptcy until he received notice of the Amended Schedule. He timely filed a Proof of Claim, but the Debtor did not amend his Plan to comport with his Amended Schedule. Davis was not included in the Debtor's Plan and he did not receive any payments through the Plan. The Debtor's Amended Schedule and Davis's Proof of Claim do not automatically qualify Davis's claim as dischargeable. The debt must be provided for in the Debtor's Plan to be discharged pursuant to 11 U.S.C. Section 1328. The discharge injunction is not applicable to Davis because the debt owed him was not discharged in the Debtor's bankruptcy. The Debtor's bankruptcy case will not be reopened and the Debtor's Motion is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Motion to Reopen Bankruptcy for Sanctions Against Jack. A. Davis for Violation of the Discharge Injunction is hereby **DENIED**.

Dated this 11th day of April, 2007.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

¹² In re Moore, 247 B.R. 677, 686-689 (Bankr. W.D. Mich. 2000).

¹³ Id.

¹⁴ Id. at 679.

¹⁵ Moore, 247 at 682.

¹⁶ Id.

¹⁷ Id. at 679.