

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

In re:

Case No: 06:06-bk-02669-ABB

BRUCE R WASSON and  
LAVINIA ANN WASSON,

Debtors.

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**ORDER**

This matter came before the Court on the Debtors' Second Motion for Sanctions Against FIA Card Services as Successor to Bank Card Services/Wachovia Securities and MNBNA (Doc. No. 26) ("Motion") filed by Bruce R. Wasson and Lavinia Ann Wasson, the Debtors herein (collectively, the "Debtors"), against FIA Card Services as Successor to Bank Card Services/Wachovia ("FIA") and MBNA. The Debtors filed an initial Motion for Contempt for Violations of the Automatic Stay (Doc. No. 14) and settled the matter for an undisclosed amount. FIA has breached this agreement. An evidentiary hearing was held on March 26, 2007 at which the Debtors and their counsel appeared. The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

**FINDINGS OF FACT**

The Debtors filed this case on October 13, 2006 ("Petition Date") and Debtors' Notice of Commencement of this case was sent to all creditors, including FIA. The Debtors received their discharge on February 14, 2007.<sup>1</sup> Subsequent to the Debtors' filing of this case FIA sent multiple notices attempting to collect monies from the Debtors and have reported derogatory references in the Debtors' credit file post-petition.

The Debtors filed a Motion for Contempt for Violations of the Automatic Stay on January 9, 2007.<sup>2</sup> The Debtors entered into a confidential Joint Stipulation to Resolve Controversy<sup>3</sup> with FIA on January 31, 2007 which was filed on February 2,

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<sup>1</sup> Doc. No. 22.

<sup>2</sup> Doc. No. 14.

<sup>3</sup> Doc. No. 17.

2007. FIA failed to comply with the stipulation and the Debtors filed the instant Motion. FIA was fully aware of the Debtors' bankruptcy and FIA intended to violate their injunction right. The Debtors have incurred punitive and actual damages and attorneys fees in connection with the prosecution of their Motion. FIA's actions are found to be a violation of the provisions of the Discharge Injunction and sanctions are warranted. The Debtors are entitled to Sanctions in the amount of \$5,000.00, \$1,000.00 for actual damages and \$4,000.00 for punitive damages, and \$1,500.00 for attorney's fees.

**CONCLUSIONS OF LAW**

A discharge injunction automatically and immediately arises pursuant to 11 U.S.C. § 524(a) when a debtor is granted a discharge. A discharge specifically "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 debt as a personal liability of the debtor whether or not discharge of such debt is waived." 11 U.S.C. § 524(a) (2005). The injunction is broad, forever protecting a debtor post-discharge from the collection of discharged debts. 4 COLLIER ON BANKRUPTCY ¶ 524.02[2], at 524-14.9 (15th ed. rev. 2005). Section 524 "thus embodies the 'fresh start' concept of the bankruptcy code." Hardy by & Through Internal Revenue Serv. v. United States (In re Hardy), 97 F.3d 1384, 1988-89 (11th Cir. 1996).

Section 524 provides injunctive relief to a debtor but does not specifically provide for other relief, such as monetary damages. Courts are empowered to award debtors actual damages for violations of § 524 pursuant to the courts' inherent contempt powers. Id. at 1389; *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45, 50, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991) (recognizing the existence and potency of the courts' inherent powers to sanction conduct which abuses the judicial process). Courts also have statutory contempt powers deriving from § 105 of the Bankruptcy Code. In re Hardy, 97 F.3d at 1389; Jove Eng'g, Inc. v. Internal Revenue Serv. (In re Jove Eng'g, Inc.), 92 F.3d 1539, 1543 (11th Cir. 1996) (explaining § 105(a) is distinct from the court's inherent powers). Section 105(a) of the Bankruptcy Code grants a bankruptcy court broad power in the administration of bankruptcy cases:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the

raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). The inclusion of the word “any” in § 105(a) “. . . encompasses all forms of orders including those that award monetary relief . . . . The broad term ‘any’ is only limited to those orders that are ‘necessary or appropriate’ to carry out the Bankruptcy Code.” In re Jove, 92 F.3d at 1554.

A bankruptcy court may invoke its statutory contempt powers of § 105(a) to enforce a discharge injunction. In re Hardy, 97 F.3d at 1389; In re Riser, 298 B.R. 469, 472 (Bankr. M.D. Fla. 2003); *see also* In re Manzanares, 345 B.R. 773, 790 (Bankr. S.D. Fla. 2006). A creditor may be held liable for contempt pursuant to § 105(a) for willfully violating the permanent injunction of § 524. In re Jove, 92 F.3d at 1553-54. The Eleventh Circuit Court of Appeals has held conduct is willful if the creditor: “1) knew that the discharge injunction was invoked and 2) intended the actions which violated the discharge injunction.” In re Hardy, 97 F.3d at 1390; In re Jove, 92 F.3d at 1555.

The subjective beliefs or intent of the creditor are irrelevant. In re Hardy, 97 F.3d at 1390; In re Jove, 92 F.3d at 1555; In re Manzanares, 345 B.R. at 791. Receipt of notice of a debtor’s discharge is sufficient to establish the knowledge element of the Eleventh Circuit Court of Appeal’s two-part test. In re Hardy, 97 F.3d at 1390; In re Jove, 92 F.3d at 1555-56. The existence of willfulness is not required for a civil contempt determination relating to noncompliance with a court order:

The absence of willfulness does not relieve from civil contempt. Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance. Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act.

McComb v. Jacksonville Paper Co., 336 U.S. 187, 191, 69 S. Ct. 497, 499, 93 L. Ed. 599 (1949).

The Debtors provided FIA with notice of their bankruptcy filing. FIA, after initially violating

the Debtors’ automatic stay, was given a second opportunity to comply with the Bankruptcy Code by executing a stipulation with the Debtors and the Debtors agreed not to pursue their initial motion for contempt. FIA, however, failed to comply with the agreed upon stipulation and violated the Debtors’ discharge injunction. The Debtors obtained a discharge pursuant to 11 U.S.C. § 727(a) on February 14, 2007. The discharge injunction of § 524(a) arose immediately upon the entry of the Debtors’ discharge. FIA knew, through its receipt of Court notices, orders, and communications from the Court, and the Debtors and their counsel, the Debtors obtained a discharge and the discharge injunction of § 524 was in effect.

FIA’s on-going post-discharge communications to the Debtors constitute acts to collect or recover a discharged debt as a personal liability of the Debtors pursuant to 11 U.S.C. § 524(a)(2). FIA’s communications to the Debtors constitute a willful and intentional violation of the Debtors’ discharge injunction.<sup>4</sup> FIA intended the actions which violated the Debtor’s discharge injunction. FIA’s conduct constitutes willful violation of the Debtors’ discharge injunction. In re Hardy, 97 F.3d at 1390; In re Jove, 92 F.3d at 1555.

The Debtor is entitled to recover \$6,500.00 for actual and punitive damages, including attorneys’ fees, incurred by the Debtors as a result of FIA’s contempt. The award of monetary damages to the Debtor is made pursuant to the Court’s inherent contempt power and its statutory contempt power of 11 U.S.C. § 105(a) to enforce the Debtor’s discharge injunction, the Court’s necessary and appropriate orders, the provisions of the Bankruptcy Code, and to prevent the further abuse of the judicial process by FIA.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** the Debtor’s Motion is hereby **GRANTED**; and it is further

**ORDERED, ADJUDGED and DECREED** that

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<sup>4</sup> Any potential violation of the Truth in Lending Act (15 U.S.C. §§ 1601 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. §§ 1692 *et seq.* contained within the Truth in Lending Act), or other federal and/or state statutes and regulations governing creditor practices is not being determined.

1. FIA Card Services is ordered to pay the sum of \$1,000.00 to the Debtor representing actual damages incurred by creditor's violation of the automatic stay; \$4,000.00 in punitive damages; the sum of \$1,500.00 to Debtors' counsel for the attorney's fees for a total award of \$6,500.00 for the Second Motion for Sanctions. These sums shall be payable within 30 days from the date of this Order.

2. FIA Card Services is ordered to cease all collection activity against the Debtors and to correctly update the Debtors credit file within fourteen days of the date of this Order.

3. The Debtors may seek additional relief for any additional attorneys' fees they incur to enforce this order.

4. This Court reserves jurisdiction in this cause to insure compliance with its Order, and with the prior Order on the First Motion for Sanctions.

A separate judgment in favor of the Debtor and against FIA in the total amount of \$6,500.00 consistent with these Findings of Fact and Conclusions of Law shall be entered contemporaneously.

Dated this 13<sup>th</sup> day of April, 2007.

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