UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

MATTHEW V. MOCINI,

Debtor.
_____/

Case No.: 3:07-bk-02299-JAF

Chapter 7

MATTHEW V. MOCINI,

Plaintiff,

vs.

RENTAL SERVICE CORPORATION, USA, INC.; MOODY AND SHEA P.A.; SUSANNA S. SHEA,

Defendants.
_____/

Adv. Pro. No.: 3:08-ap-00410

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This adversary proceeding came before the Court on the Complaint filed by Matthew V. Mocini ("Plaintiff") seeking an award of damages against Rental Service Corporation, USA, Inc. ("RSC"), Moody and Shea P.A. (the "Law Firm"), and Susanna S. Shea (Ms. Shea, together with RSC and the Law Firm, the "Defendants"; the Law Firm and Ms. Shea collectively, the "Law Firm Defendants"), for breach of the discharge injunction pursuant to 11 U.S.C. Section 524 of the United States Bankruptcy Code. The trial of this proceeding was held on June 30, 2009.

At trial, the parties presented evidence concerning only the liability of the Defendants; damages would be addressed at a separate hearing if necessary. The Court elected to take the liability issue under advisement and directed the parties to submit briefs in support of their

respective positions. Upon the evidence presented and the arguments of the parties, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Plaintiff was the managing member, president, primary qualifying agent, financially responsible officer, and 20% owner of Mocini Contracting, L.L.C. (the "LLC"). (Tr. at 10, 40-41, 53; Mocini's Ex. 6). The LLC was a site and utility contractor. (Tr. at 9; Mocini's Ex. 7). In addition to Plaintiff, there were three other members and owners of the LLC: Whitley L. Hyde, Russell A. Smith, and Charles R. White. (Tr. at 10; Mocini's Ex. 3). Plaintiff held a contractor's license issued by the State of Florida Department of Business and Professional Regulation (the "DBPR"). (Tr. at 10, 32; Mocini's Ex. 7). Plaintiff personally, not the LLC, was the holder of the state contractor's license.[1] (Id.; Tr. at 122).

In June 2005, the LLC entered into a contract with RSC for the rental and purchase of equipment. (Mocini's Ex. 1). As part of the rental and purchase agreement, Plaintiff personally guaranteed to RSC payment of sums due on the LLC's account. (Id.). Eventually, the LLC fell behind on its payments to RSC. In March 2006, Plaintiff's employment with the LLC was terminated and Plaintiff turned over (control of and all documents related to) the LLC's finances to the LLC's attorneys. (Tr. at 12). The LLC was dissolved on September 15, 2006. (Tr. at 64; Mocini's Ex. 6).

On May 5, 2006, RSC, represented by the Law Firm Defendants, brought a state court action against the LLC for sums past due on its account, and against Plaintiff individually as guarantor of the sums due. (Tr. at 14; Mocini's Ex. 20). On May 31, 2007, while RSC's case against the LLC and Plaintiff was still pending, Plaintiff filed for Chapter 7 bankruptcy

protection in his individual capacity. (Tr. at 15, 18; Mocini's Ex. 2). The LLC never filed for bankruptcy protection. (Tr. at 68, 96-97). No evidence was presented indicating any of the other members of the LLC filed for bankruptcy protection.

Approximately two weeks after Plaintiff filed his bankruptcy petition, RSC, through the Law Firm Defendants, filed a motion for summary judgment in the underlying state court action. (Tr. at 98-99; Law Firm Defs.' Ex. 10). RSC's motion for summary judgment expressly informed the state court that Plaintiff had "sought protection from his creditors by filing a chapter 7 liquidation bankruptcy action." (Tr. at 99; Law Firm Defs.' Ex. 10). The motion also expressly stated "this motion for summary judgment [is] solely against MOCINI CONTRACTING." (Law Firm Defs.' Ex. 10).

While RSC's summary judgment motion did not seek summary judgment against Plaintiff personally, Plaintiff nonetheless was listed in the caption of the motion as an individual defendant in the case. (Tr. at 101; Law Firm Defs.' Ex. 10). Daniel Moody was the lawyer with the Law Firm who signed and filed the summary judgment motion. (Tr. at 98). Mr. Moody has practiced law for 25 years, primarily in construction law for at least 15 years, and he has been board certified in construction law by the Florida Bar since 2007. (Tr. at 93-95).

Mr. Moody admitted the Law Firm left Plaintiff's name in the caption of the summary judgment motion. (Tr. at 101). Both at the time he filed the motion and at the time of trial, Mr. Moody believed in Florida state court one does not change the style of a lawsuit unless there is a court order or unless a counterclaim or third-party claim is added. (Tr. at 101-102). No

[1] In Florida only an individual, not a company or business, can hold a contractor's license. (Tr. at 83-84, 122).

testimony or other evidence was presented at trial indicating Mr. Moody's understanding of Florida state court practice in this regard was incorrect.[2]

Plaintiff obtained his Chapter 7 bankruptcy discharge on October 3, 2007. (Tr. at 18; Mocini's Ex. 4). Among the debts discharged was Plaintiff's personal liability to RSC on the personal guaranty. (Tr. at 15-18).

After Plaintiff received his discharge, a hearing was held on RSC's motion for summary judgment, and summary judgment was entered in favor of RSC and against the LLC on May 12, 2008. (Mocini's Exs. 5, 20). The summary judgment, like the motion before it, retained Plaintiff's name in the caption, and also contained language directing the "judgment debtors" (plural) to complete the fact information sheet set forth in Florida Rule of Civil Procedure Form 1.977. (Id.). Mr. Moody testified his firm drafted the form of judgment and submitted it to the court, and the use of the plural "debtors" was an error. (Tr. at 106-107). The plural of the word "debtor" was "boilerplate" language his firm "cut and pasted" from a prior judgment. (Id.). Although the summary judgment was entered against the LLC only, Plaintiff contends it was deceptive because it retained his name in the caption and because it implied there were two or more judgment debtors. (Tr. at 51, 105; Law Firm Defs.' Ex. 22).

Ultimately, the LLC failed to pay the judgment entered against it in the underlying state court action. On September 4, 2008, the Law Firm Defendants, on behalf of RSC, filed an administrative complaint with the DBPR asserting the LLC had failed to satisfy a judgment, in violation of Section 489.129(1)(q) of the Florida Statutes as well as a companion administrative

[2] Mr. Moody's testimony is supported by a final judgment entered by the Duval County Circuit Court on December 6, 2007 against the LLC and in favor of Ring Power Corporation. (See Law Firm Defs.' Ex. 12). That final judgment, like the summary judgment at issue in this adversary proceeding, was entered after Plaintiff's bankruptcy discharge and is against only the LLC, not Plaintiff personally, yet it includes Plaintiff's name in its caption. (Id.; Tr. at 102-103).

code rule. (Tr. at 78-79; Mocini's Ex. 8). Section 489.129(1)(q) provides that the Construction Industry Licensing Board ("CILB") may sanction contractors or business organizations if they "[fail] to satisfy within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession." In such circumstances, the CILB may "place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate, registration, or certificate of authority, require financial restitution to a consumer . . . , impose an administrative fine . . . , require continuing education, or assess costs associated with investigation and prosecution." Fla. Stat. § 489.129(1) (2008).

Plaintiff alleges the administrative complaint was a post-discharge collection action against not only the LLC, but also Plaintiff personally, in violation of the discharge injunction of 11 U.S.C. § 524. Specifically, Plaintiff argues the administrative complaint identified him personally as the subject, referenced his individual contractor's license, failed to disclose he had filed personal bankruptcy, and incorrectly stated RSC had a judgment not only against the LLC, but also against him personally. (Tr. at 107-108; Mocini's Ex. 12).

The administrative complaint listed Plaintiff as the "Subject of Complaint" and it clearly referenced Plaintiff's individual contractor's license number. (Tr. at 83-84; Mocini's Ex. 8). However, the DBPR Uniform Complaint Form requires the name and license number of the license holder, and Plaintiff, not the LLC, was the holder of the state license. (Tr. at 10, 32). The Defendants claim they only included such information because the DBPR Uniform Complaint Form requested it.

The administrative complaint failed to alert the DBPR as to Plaintiff's bankruptcy status. (Mocini's Ex. 8). The Defendants argue in response the DBPR Uniform Complaint Form does

not specifically request any bankruptcy information. (Tr. at 108-109). Mr. Moody testified he believed the DBPR investigates construction businesses and individual license holders regardless of whether there has been a bankruptcy filing. (Id.; Law Firm Defs.' Ex. 23). The administrative complaint did specifically describe Plaintiff's personal guaranty to RSC on behalf of the LLC's debts. (Mocini's Ex. 8).

Finally, the administrative complaint incorrectly stated a summary judgment had been entered against both the LLC and Plaintiff. (Mocini's Ex. 8). Ms. Shea testified the offending phrase in the administrative complaint was included by mistake, and she simply missed and failed to correct the error when she proofread the document. (Tr. at 82-83, 87-88).

Although the LLC was dissolved in 2006, as the Court noted it never declared bankruptcy. (Tr. at 64, 96-97). The Law Firm Defendants claim they were given conflicting information about the assets of the LLC, and they filed the administrative complaint because there was a possibility of collecting on RSC's judgment against the LLC. (Tr. at 96-97).

In October, 2008, Plaintiff informed the DBPR of his bankruptcy status and indicated his debts to RSC had been discharged. (Mocini's Ex. 10). On January 13, 2009, Plaintiff's lawyer again informed the DBPR of Plaintiff's personal bankruptcy and indicated Plaintiff had filed the instant adversary proceeding. (Mocini's Ex. 12). On January 21, 2009, the Law Firm sent a letter to the DBPR clarifying the summary judgment was not against Plaintiff personally and acknowledging the error. (Tr. at 109-110; Law Firm Defs.' Ex. 23).

Plaintiff argues the Defendants violated the discharge injunction of 11 U.S.C. § 524 in two[3] ways: 1) the form of summary judgment submitted by the Law Firm Defendants (and

[3] In his complaint, Plaintiff also argued the Defendants violated the discharge injunction by attempting to compel Plaintiff to attend a deposition. At trial, the Court ruled Plaintiff's arguments with respect to this issue were without merit.

ultimately adopted by the state court) was intentionally deceptive because it retained Plaintiff's name in the caption and implied there were two or more judgment debtors; and 2) the administrative complaint submitted to the DBPR was an intentional post-discharge collection action directed not only at the LLC, but also at Plaintiff personally. Plaintiff seeks relief under 11 U.S.C. § 524(a) as well as the Court's contempt powers under 11 U.S.C. § 105(a).

The Court finds the summary judgment was not deceptive merely because it retained Plaintiff's name in the caption, and the use of the plural "debtors" was a harmless error. However, the Court finds the Defendants violated the discharge injunction by filing the administrative complaint with the DBPR in an effort to collect a discharged debt.

CONCLUSIONS OF LAW

A. The Section 524 Discharge Injunction and Its Enforcement.

"A discharge injunction automatically and immediately arises pursuant to 11 U.S.C. § 524(a) when a debtor is granted a discharge." In re Wasson, Case No. 06:06-bk-02669-ABB, 2007 WL 4322444, at *1 (Bankr. M.D. Fla., Apr. 13, 2007). "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 . . . .'" Id. (quoting 11 U.S.C. § 524(a)).

Bankruptcy courts "have statutory contempt powers deriving from § 105 of the Bankruptcy Code . . . [and a] bankruptcy court may invoke its statutory contempt powers of § 105(a) to enforce a discharge injunction." In re Wasson, 2007 WL 4322444, at *2. "A [creditor] may be liable for contempt under § 105 if it willfully violates § 524's permanent injunction. A creditor's conduct in violating the discharge injunction is willful if the creditor: 1) knew that the discharge injunction was invoked; and 2) intended the actions, which violated

the discharge injunction." Nibbelink v. Wells Fargo Bank, N.A. (In re Nibbelink), 403 B.R. 113, 120 (Bankr. M.D. Fla. 2009) (citing Hardy v. United States (In re Hardy), 97 F.3d 1384, 1390 (11th Cir. 1996)) (alteration in original). Here, there is no question the Defendants knew the discharge injunction was invoked. The Defendants simply contend they took no actions which violated the discharge injunction.

"A finding of civil contempt must be based on 'clear and convincing evidence' that a court order was violated." Jove Engineering, Inc. v. IRS (In re Jove Engineering, Inc.), 92 F.3d 1539, 1545 (11th Cir. 1996) (a § 362(a) case); see also In re Dorado Marine, Inc., 343 B.R. 711, 713 (Bankr. M.D. Fla. 2006) ("Case law also makes it clear that the party seeking a finding of civil contempt must prove a violation of an order by clear and convincing evidence.").

B. The Summary Judgment Did Not Violate the Discharge Injunction.

Plaintiff asserts the state court summary judgment was deceptive because his name was included in the case caption and because it ordered the "judgment debtors" to complete Florida Rule of Civil Procedure Form 1.977. The Court finds the summary judgment was not deceptive. The summary judgment specifically states only the LLC is liable for the sums due; Plaintiff individually is not mentioned within the body of the judgment. He is only listed in the caption. The caption of the pleading or judgment does not control the parties to the suit or the relief requested or awarded. See Altamonte Hitch and Trailer Serv., Inc. v. U-Haul Co. of Eastern Fla., 498 So.2d 1346, 1347 (Fla. 5th Dist. Ct. App. 1986) ("The general rule is that the body of the complaint, and not the caption, determines who is a party to the action.").

Moreover, when the Defendants originally filed the state court action, both the LLC and Plaintiff individually were named as parties. (Mocini's Ex. 1). Consequently, the original caption of the case included both the LLC and Plaintiff individually. (Id.). Thereafter, according

to the Florida Rules of Civil Procedure, "[e]very pleading, motion, order, judgment, or other paper [filed in the case was required to] have a caption containing . . . the name of the first party on each side with an appropriate indication of other parties . . . " Fla. R. Civ. P. 1.100(c)(1) (emphasis added). Plaintiff was never formally dismissed as a party to the suit; thus, Plaintiff was required to be "indicated" in the summary judgment caption. Further, regardless of changes in the parties to a lawsuit, the names in the caption typically are not changed in Florida. See Henry P. Trawick, Jr., Fla. Prac. & Proc. § 6:2 (2010 ed.) ("The names of the parties in the caption are never changed even when all original parties have ceased to be parties.") (emphasis in original). This Court is aware of no rule or statute, federal or state, requiring the caption in a lawsuit be changed upon the bankruptcy of one of the named parties. Retaining Plaintiff's name in the caption of the summary judgment was not deceptive, did not constitute an act to collect a debt against Plaintiff personally, and did not violate the discharge injunction.[4]

Similarly, the Court finds the inclusion of the "debtors" language in the last two paragraphs of the summary judgment was not deceptive. The last two paragraphs correspond to Florida Rule of Civil Procedure Rule 1.560(c). Rule 1.560(c) requires judges to include these two paragraphs in final judgments if requested by the prevailing party. See Fla. R. Civ. P. 1.560(c). However, in the Florida rule, the "s" on the end of "debtors" is in parentheses. Mr. Moody testified the plural "debtors" (without parentheses) was used in the summary judgment by mistake. (Tr. at 106). The Court finds it was a harmless error; there was no intent to coerce Plaintiff to fill out a fact information sheet or to deceive him or anyone else into thinking the judgment was against Plaintiff personally. Despite the error, the summary judgment was clearly

[4] Plaintiff received his discharge before the summary judgment, so Plaintiff had the opportunity to file a motion to dismiss as to himself and to remove his name from the caption on the basis that the debt had been discharged.

entered against the LLC only. The use of the plural "debtors" in the summary judgment was not deceptive, was not an act to collect a discharged debt, and did not violate the discharge injunction.[5]

C. The Administrative Complaint Violated the Discharge Injunction.

Plaintiff contends the administrative complaint was a post-discharge collection effort directed not only at the LLC, but also at Plaintiff personally. Plaintiff notes the administrative complaint identified him by name as the subject of the complaint and referenced his personal contractor's license number. He argues it failed to disclose he had filed personal bankruptcy and it incorrectly stated RSC had a judgment not only against the LLC, but also against Plaintiff personally.

As previously stated, a creditor is liable for contempt under § 105 if it "willfully" violates Section 524's discharge injunction. "A creditor's conduct in violating the discharge injunction is willful if the creditor: 1) knew that the discharge injunction was invoked; and 2) intended the actions, which violated the discharge injunction." Nibbelink, 403 B.R. at 120. Here, there is no question the Defendants knew the discharge injunction was invoked.

The "subject of complaint" section of the DBPR Uniform Complaint Form specifically requests the last name, first name, middle name, license number, and occupation of the "subject of complaint." Only individuals have last names, first names and middle names, and only individuals, not business entities, have license numbers in Florida. By providing Plaintiff's name and license number, the Defendants simply provided the factual information required by the DBPR Uniform Complaint Form. The Defendants argue there is no way to file a complaint

[5] Plaintiff could have filed a motion requesting the summary final judgment be amended to clarify it was only entered as to the LLC.

against a qualified business without providing this information about the qualifying license holder. The Court agrees with the Defendants on this issue.

Plaintiff's other arguments, however, are more problematic to the Defendants. For example, the DBPR complaint fails to mention Plaintiff's personal bankruptcy. The Defendants rely on the fact that the DBPR Uniform Complaint Form does not specifically ask for bankruptcy status information. The Defendants' response is not persuasive. The DBPR Uniform Complaint Form did not specifically ask for information regarding personal guaranties either, yet the Defendants emphasized Plaintiff's personal guaranty to RSC on behalf of the LLC's debts. If the administrative complaint were directed solely at the LLC and not also at Plaintiff personally (as the Defendants claim), information regarding Plaintiff's personal guaranty of the LLC's debts would have been unnecessary and irrelevant.

Mr. Moody testified it is the Law Firm's standard practice to refrain from including "information about the bankruptcy of the debtor company or the qualifying agent in any complaints [it] make[s] to the DBPR." (Tr. at 109). Ms. Shea testified the information regarding Plaintiff's personal guaranty was included in the administrative complaint as a "part of linking him to the company." (Tr. at 86-87). The Court finds by clear and convincing evidence the Defendants intended to omit Plaintiff's bankruptcy status and include Plaintiff's personal guaranty. The administrative complaint's failure to include Plaintiff's personal bankruptcy, when combined with the inclusion of information regarding Plaintiff's personal guaranty, suggests the complaint was aimed to encourage the DBPR to pressure Plaintiff personally into paying a discharged debt.

The Court's conclusion is further bolstered by the incorrect statement in the administrative complaint indicating summary judgment had been entered against both Plaintiff

and the LLC. Ms. Shea testified the offending phrase in the administrative complaint was included by mistake. (Tr. at 82-83, 87-88). Had this been the administrative complaint's only problem, damages for violation of the discharge injunction would not have been appropriate.[6] However, when viewed in light of the omission of Plaintiff's bankruptcy status and the inclusion of Plaintiff's personal guaranty, the incorrect statement regarding the summary judgment becomes significant. While the administrative complaint does not specifically demand payment from or request punishment or sanctions against Plaintiff, it overwhelmingly represents an attempt by the Defendants to utilize the DBPR's regulatory power to coerce Plaintiff into paying the discharged debt.

The Defendants argue the administrative complaint was merely a notice to the appropriate regulating state agency indicating the LLC had violated a state statute and rule by failing to timely pay a judgment. They argue the state statute and rule serve to protect the public from financial harm that could be caused by unscrupulous utility contractors. However, the Defendants likely knew (and a quick review of public records would have indicated) the LLC dissolved two years prior to the administrative complaint. The Defendants did not file the administrative complaint to protect the public; it was clearly a collection action. Mr. Moody admitted it was a collection action, but claimed it was aimed solely at the LLC. (Tr. at 97-98).

Mr. Moody's testimony notwithstanding, the administrative complaint contained an unnecessary and misleading fact (that Plaintiff signed a personal guaranty), a glaring omission (that Plaintiff had received a discharge as to the personal guaranty), and a false assertion (that a judgment had been entered against Plaintiff). Taken together, these three facts indicate the

[6] If the statement were a simple mistake, it would not amount to a "willful" violation of the discharge injunction. See Nibbelink, 403 B.R. at 120.

administrative complaint was in fact an act to collect a discharged debt from Plaintiff, in violation of the discharge injunction. The Court finds, by clear and convincing evidence, the Defendants knew the discharge injunction had been invoked and intended the actions which violated the discharge injunction.

In their brief, the Defendants cite to several cases for the general proposition that a creditor's participation in the criminal prosecution of a discharged debtor is not a violation of the bankruptcy discharge injunction, if the debtor's criminal prosecution arises out of the same circumstances that gave rise to the discharged debt. See Barnette v. Evans, 673 F.2d 1250 (11th Cir. 1982); Walker v. Gwynn, 157 F. App'x 171 (11th Cir. 2005) (per curiam); Kavoosi v. Russell (In re Kavoosi), 55 B.R. 120 (Bankr. S.D. Fla. 1985). Using this proposition, the Defendants argue if a creditor can seek to have a discharged debtor thrown in jail, surely a creditor can file an administrative complaint against a discharged debtor, especially since the possible penalties that could result from such a complaint vary widely.

The Court finds the Defendants' argument and case law irrelevant. To be clear, the Court is not concluding that a creditor or a creditor's lawyer cannot file an administrative complaint with a regulatory agency without violating the discharge injunction. The Court makes no holding concerning whether the Defendants would have violated the discharge injunction if the administrative complaint were unambiguously directed solely at the LLC. In the instant case, the Defendants' mischaracterizations, omissions and errors in the administrative complaint revealed the Defendants' ulterior motive. The administrative complaint was deceptive and intended to encourage the DBPR to pressure Plaintiff into paying a discharged debt. As such, it constituted a violation of the discharge injunction.

D. Both RSC and the Law Firm Defendants are Liable for the Discharge Injunction Violation.

Both creditors and their attorneys may be held liable for violations of the discharge injunction. See In re Simonetti, 117 B.R. 708, 709 (Bankr. M.D.Fla. 1990) (holding a mortgage holder and its counsel in contempt and liable for damages for seeking a deficiency judgment in state court on a discharged mortgage liability); In re Clay, 2005 WL 670326, *2 (Bankr. C.D.Ill. 2005) (holding the same); Miller v. Mayer (In re Miller), 81 B.R. 669, 679 (Bankr. M.D.Fla. 1988), later proceeding, 89 B.R. 942 (Bankr. M.D.Fla. 1988) (imposing sanctions on a creditor's attorney who attempted to coerce a debtor into relinquishing all rights in a piece of property subject to a debt which had previously been discharged); In re Vazquez, 221 B.R. 222, 230 (Bankr. N.D.Ill. 1998) ("Courts have often sanctioned defendants and their attorneys for violation of the discharge injunction."); In re Bock, 297 B.R. 22, 29 (Bankr. W.D.N.C. 2002) (holding creditor and attorney liable for compensatory damages for willful violation of discharge).

There is ample evidence on the record indicating the Law Firm was partially, if not exceedingly, responsible for the actions which violated the stay. As previously noted, Mr. Moody testified it is the Law Firm's standard practice to refrain from including "information about the bankruptcy of the debtor company or the qualifying agent in any complaints [it] make[s] to the DBPR." (Tr. at 109). Mr Moody also stated:

> "RSC was not specifically involved in any decisions made [with regard to] the filing of the Administrative Complaint, because the filing of the Administrative Complaint is a standard practice for our firm. . . . I'm just indicating that [the Administrative Complaint] was obviously done on the advice of counsel. That this was something that we did on behalf of RSC, because that's the action we take as their attorney."

(Tr. at 115-116). Clearly the Law Firm's standard practices are not primarily concerned with bankruptcy laws. While RSC ultimately is responsible for its attorneys' actions on its behalf, "[a]n attorney is not relieved from liability because of his status as an agent of the creditor." Vazquez, 221 B.R. at 230.

Finally, Plaintiff included Ms. Shea personally as a defendant because she signed the administrative complaint. From the record, the Court is persuaded that RSC's desire to recoup its loss and the Law Firm's standard collection practices were responsible for the actions which violated the discharge injunction. The Court is more concerned with deterring harmful conduct of creditors and collection counsel than in punishing an individual attorney for following her firm's standard practices. Accordingly, Ms. Shea will be dismissed as a defendant in this proceeding.

CONCLUSION

The administrative complaint's mischaracterizations, omissions and errors revealed the Defendants' ulterior motive to encourage the DBPR to pressure Plaintiff into paying a discharged debt. RSC and the Law Firm knew the discharge injunction was invoked and intended the actions which violated the injunction. For the reasons set forth above, this Court holds that RSC and the Law Firm violated the discharge injunction of 11 U.S.C. § 524 by filing the administrative complaint with the DBPR.

The Court will hold a separate hearing to consider damages on May 17, 2010, at 10:00am. In anticipation of the damages hearing and for the benefit of the parties, the Court has reviewed the relevant case law regarding the imposition of punitive damages[7] in light of the facts

[7] "Relevant factors that may be considered in determining whether punitive damages are appropriate for a creditor's violation of the automatic stay (and equally applicable for violations of the discharge injunction) are: (1) the nature of the creditor's conduct; (2) the creditor's ability to pay damages; (3) the motive of the creditor; and (4) any

on the record, and it has concluded the Defendants' conduct was not egregious enough to warrant an award of punitive damages.

Defendant Ms. Shea is hereby dismissed from this proceeding. Final judgment will be entered after the damages hearing.

DATED this 30 day of March, 2010, in Jacksonville, Florida.

/s/ Jerry A. Funk

JERRY A. FUNK
United States Bankruptcy Judge

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Local Rule 1007-2 Parties in Interest List

provocation by the debtor." Vazquez, 221 B.R. at 231 (citing Nigro v. Oxford Dev. Co. (In re M.J. Shoearama, Inc.), 137 B.R. 182, 190 (Bankr. W.D.Pa. 1992). Punitive damages are awarded in response to particularly egregious conduct for both punitive and deterrent purposes. In re Gault, 136 B.R. 736, 739 (Bankr. E.D.Tenn. 1991) (citing Wagner v. Ivory (In re Wagner), 74 B.R. 898, 903-04 (Bankr. E.D.Pa. 1987)).