



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
July 15, 2016

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\*\*\*\*\*

In re:	)	Case No.: 16-11628-MKN
JONATHAN A. MOLNAR and JOEY A. MOLNAR,	)	Chapter 7
	)	
Debtors.	)	
_____	)	
VENETIAN CASINO RESORT, LLC, a Nevada domestic limited liability company,	)	Adversary No.: 16-01074-MKN
	)	
Plaintiff,	)	
v.	)	Date: July 13, 2016
JONATHAN ALLAN MOLNAR,	)	Time: 2:30 p.m.
	)	
Defendant,	)	
KATE O'KEEFFE,	)	
	)	
Intervenor.	)	
_____	)	

**ORDER REMANDING REMOVED ACTION AND DENYING  
VENETIAN CASINO RESORT, LLC'S  
MOTION FOR PRELIMINARY INJUNCTION  
WITHOUT PREJUDICE<sup>1</sup>**

<sup>1</sup> In this Order, all references to "Section" or "§" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "NRCF" are to the Nevada Rules of Civil Procedure. All references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of the court. All references to "AECF No." are to the numbers assigned to the documents filed in the above-captioned adversary proceeding.

1 On July 13, 2016, the court heard Venetian Casino Resort, LLC's Motion for Preliminary  
2 Injunction ("Preliminary Injunction Motion"). The appearances of counsel were noted on the  
3 record. After arguments were presented, the matter was taken under submission.

#### 4 **BACKGROUND**

5 On March 30, 2016, Jonathan A. Molnar ("Molnar") along with his wife, Joey A.  
6 Molnar, filed a joint Chapter 7 petition. (ECF No. 1). The bankruptcy case was assigned for  
7 administration to Victoria Nelson as Chapter 7 trustee ("Trustee"). A meeting of creditors  
8 required by Section 341(a) was scheduled for May 6, 2016, and a deadline of July 5, 2016, was  
9 established for any interested parties to object to discharge under Section 727(a) and to object to  
10 the discharge of particular debts under Section 523(a). (ECF No. 4).

11 On April 13, 2016, Molnar and his wife (jointly, "Debtors") filed their schedules of  
12 assets and liabilities ("Schedules"), statement of financial affairs ("SOFA"), and other  
13 information required by Section 521(a). (ECF No. 11). On their Schedule "E/F," Debtors listed  
14 Venetian Casino Resort, LLC ("Venetian"), as the holder of a nonpriority unsecured claim, in an  
15 unknown amount, based on a lawsuit. In Part 4 of their SOFA, Debtors disclosed a lawsuit  
16 pending in the Eighth Judicial District Court, Clark County, Nevada ("State Court"), styled as  
17 Venetian Casino Resort LLC v. Jonathan Allan Molnar, denominated Case No. A-16-733164-C  
18 ("State Court Action").

19 On May 6, 2016, the Trustee docketed a report of no distribution stating that there is no  
20 non-exempt property available for distribution to creditors in the case ("No-Asset Report").  
21 (ECF No. 16).

22 On May 20, 2016, a motion for an order finding that the automatic stay does not apply,  
23 or, for relief from automatic stay to proceed with discovery ("MRAS") was filed on behalf of  
24 Kate O'Keeffe ("O'Keeffe"), a journalist who wrote an article that appeared in the Wall Street  
25 Journal. (ECF No. 17). Upon an ex parte motion, an expedited hearing on the MRAS was  
26 scheduled for May 25, 2016. (ECF No. 23).

27 On May 24, 2016, Venetian removed the State Court Action to the bankruptcy court by  
28 filing a Notice of Removal ("Removal Notice") under 28 U.S.C. § 1452(a) and FRBP 9027.

1 Upon removal, the State Court Action was assigned Adversary Proceeding No. 16-01074-MKN.  
2 The attachments to the Removal Notice reveal that Venetian commenced the State Court Action  
3 on March 9, 2016, by filing a complaint seeking damages against Molnar for breach of a  
4 confidentiality agreement<sup>2</sup> with the Venetian as well as a breach of his employment agreement.  
5 Separate claims for both contractual and tortious breach of the implied covenant of good faith  
6 and fair dealing also are included. In addition, the complaint seeks an injunction preventing  
7 Molnar from disclosing any confidential information obtained during the course of his five-year  
8 employment on a personal security detail for Sheldon G. Adelson (“Adelson”), a principal of  
9 Venetian.

10 The attachments to the Removal Notice also reveal that on March 11, 2016, Venetian  
11 filed the instant Preliminary Injunction Motion that was scheduled to be heard in the State Court  
12 on March 31, 2016. The attachments to the Removal Notice also include a copy of an ex parte  
13 application filed in the United States District Court for the District of Nevada (“USDC”) on  
14 January 7, 2016, for issuance of a subpoena to Molnar requiring him to appear for a deposition  
15 and to produce documents for use in a foreign proceeding (“Subpoena”). That application was  
16 made on behalf of O’Keeffe (“Subpoena Application”) in a miscellaneous proceeding that she  
17 had commenced in the USDC on September 18, 2014. The miscellaneous proceeding  
18 subsequently was determined to be a contested matter and assigned Case No. 2:14-cv-01518-  
19 RFB-CWH. That proceeding had been commenced by O’Keeffe so that she could obtain  
20 discovery to defend herself against a libel claim that Adelson had brought against her in Hong  
21

---

22 <sup>2</sup> A copy of the confidentiality agreement is attached as an exhibit to the complaint filed  
23 in the State Court Action. The confidentiality agreement includes a “Forced Disclosure”  
24 provision stating, in pertinent part, as follows: “If, in the absence of a protective order or other  
25 remedy or the receipt of a waiver by the Employer, the Employee nonetheless is **legally**  
26 **compelled to disclose Confidential Information to any tribunal or else would stand liable**  
27 **for contempt or suffer other censure or penalty, the Employee may, without liability**  
28 **herein, disclose to such tribunal only that portion of the Confidential Information which**  
**the Employee is legally required to disclose, provided that the Employee exercises his best**  
**efforts to preserve the confidentiality of the Confidential Information**, including, without  
limitation, by cooperating with the Employer to obtain an appropriate protective order or other  
reliable assurance that confidential treatment will be accorded the Confidential Information by  
such tribunal.” (Emphasis added.)

1 Kong. The discovery apparently is intended to establish that certain statements about Adelson  
2 made by O’Keeffe in an article published in the Wall Street Journal are truthful and therefore not  
3 libelous.<sup>3</sup>

4 On May 25, 2016, an initial hearing was conducted on the MRAS. Counsel appeared on  
5 behalf of O’Keeffe, Venetian, and the Debtors. The court continued the hearing one week to see  
6 if counsel could resolve the MRAS as well as the Preliminary Injunction Motion.

7 On June 1, 2016, counsel agreed to continue the MRAS to July 13, 2016,

8 On June 7, 2016, an order was entered approving a stipulation setting a briefing schedule  
9 on the MRAS. (ECF No. 32). Additionally, the order established a briefing schedule for the  
10 Preliminary Injunction Motion and set that motion to be heard on July 13, 2016, concurrently  
11 with the MRAS.

12 On June 30, 2016, O’Keeffe filed a motion to intervene in the State Court Action  
13 removed to the bankruptcy court. (AECF No. 5).<sup>4</sup> On the same date, O’Keeffe filed opposition  
14 to the Preliminary Injunction Motion (“O’Keeffe Opposition”). (AECF No. 8).

15 On July 5, 2016, O’Keeffe filed an amended motion to intervene in the Debtors’ Chapter  
16 7 proceeding. (ECF No. 42). An order shortening time was entered so that the motion could be  
17 heard concurrently with the other matters scheduled for July 13, 2016. (ECF No. 46).

18 On July 6, 2016, the Debtors’ discharge was entered under Section 727(b). (ECF No.  
19

---

20 <sup>3</sup> A copy of an amended Subpoena is included with the Preliminary Injunction Motion  
21 and includes an attachment specifying the scope of Molnar’s deposition as follows: “(1) Any  
22 instances in which Adelson used foul or otherwise offensive language. (2) Any communication  
23 between you and Adelson in which Adelson used foul or otherwise offensive language. (3) Any  
24 communications between you and others in which Adelson’s use of foul or offensive language  
25 was referenced or discussed. (4) Adelson’s demeanor.” Venetian apparently believes that the  
26 fourth category - the principal’s demeanor - is so broad as to permit O’Keeffe to examine Molnar  
27 regarding the personal security and private lives of the principal’s family members. While  
denying that such questions would ever be asked, O’Keeffe maintains that Venetian could  
immediately seek a protective order from the USDC in the event such questions are asked. That  
amended Subpoena scheduled the Molnar deposition to take place on May 27, 2016, but the  
deposition apparently has not taken place pending the outcome of the MRAS.

28 <sup>4</sup> An order shortening time was entered so that the motion could be heard along with the  
MRAS and the Preliminary Injunction Motion. (AECF No. 10).

1 48). The court's docket reveals that no creditor, including Venetian, timely filed a complaint  
2 seeking a determination of dischargeability of indebtedness under Section 523(a).

3 On July 7, 2016, Venetian filed its reply in support of the Preliminary Injunction Motion.  
4 (AECF No. 13).<sup>5</sup>

### 5 DISCUSSION

6 On July 13, 2016, counsel for the parties appeared in connection with the Preliminary  
7 Injunction Motion as well as all other matters scheduled for hearing.<sup>6</sup>

8 At the inception of the hearing, the court expressed its concern over its jurisdiction in  
9 light of the No-Asset Report establishing that no creditors, including Venetian, will receive a  
10 distribution from this bankruptcy case. More important, since the time the Preliminary  
11 Injunction Motion was scheduled for hearing, the Debtors had received their Chapter 7 discharge  
12 of all prebankruptcy debts, including the damage claims alleged in the State Court Action.<sup>7</sup>  
13 Because the outcome of the State Court Action will not result in any distribution to creditors of  
14 the estate, nor will it supercede or otherwise alter the Debtors' discharge of any prebankruptcy  
15 personal liabilities, the court expressed its skepticism over whether there remains a case and  
16

---

17  
18 <sup>5</sup> On July 11, 2016, an errata to the reply was filed by Venetian. (AECF No. 16).

19 <sup>6</sup> To the extent required to resolve the matters before the court, the motions by O'Keeffe  
20 to intervene in the Debtors' bankruptcy case as well as in the State Court Action were granted  
21 without objection.

22 <sup>7</sup> At the hearing, the court was referred to page 5, lines 10-13, of the O'Keeffe Opposition  
23 as establishing that Molnar had breached the confidentiality agreement prior to commencement  
24 of the bankruptcy case. Under Section 523(c), objections to the dischargeability of  
25 prebankruptcy debts encompassed by Section 523(a)(2)[fraud and misrepresentation], Section  
26 523(a)(4)[larceny, embezzlement, and fiduciary defalcation], and Section 523(a)(6)[willful and  
27 malicious injury], must be made exclusively in the bankruptcy court before the discharge is  
28 entered. See generally 4 COLLIER ON BANKRUPTCY, ¶ 523.03 (Alan N. Resnick and Henry J.  
Sommer, eds., 16th ed. 2016). Whether or not Venetian could have established a prebankruptcy,  
tortious breach of the agreement giving rise of a nondischargeable debt under Section 523(a)(6),  
compare Adelson v. Smith (In re Smith), 397 B.R. 124 (Bankr.D.Nev. 2008)(libel claim against  
Chapter 7 individual debtor constituting willful and malicious injury under 523(a)(6) qualifies as  
a personal injury tort claim that must be tried in the district court), the deadline for asserting such  
a claim has passed and any such claim has been discharged.

1 controversy over which the court has, or continues to have, jurisdiction.<sup>8</sup> The court informed  
2 counsel that a remand of the State Court Action pursuant to 28 U.S.C. § 1452(b) is being  
3 considered by the court, but permitted counsel to present their arguments on the Preliminary  
4 Injunction Motion.

5 While acknowledging that any prepetition debts arising from the confidentiality  
6 agreement and the employment agreement have been discharged, Venetian maintains that it is  
7 still entitled to seek an order requiring Molnar to “use his best efforts” to comply with the  
8 confidentiality provisions. It argues that those obligations survived the Debtors’ bankruptcy  
9 discharge and might include efforts such as seeking a protective order from the USDC. Venetian  
10 acknowledged that even though the outcome of Molnar’s best efforts still might not prevent him  
11 from disclosing confidential information regarding Adelson, Molnar is still contractually  
12 obligated to make those efforts. Venetian therefore seeks the equitable remedy of a preliminary  
13 injunction requiring Molnar to comply with the terms of the prebankruptcy confidentiality  
14 agreement.<sup>9</sup>

15 O’Keeffe maintains that the USDC already has considered and rejected Venetian’s  
16 arguments in ruling on the Subpoena Application. On April 4, 2016, an order was entered by

17 \_\_\_\_\_  
18 <sup>8</sup> O’Keeffe acknowledged that the automatic stay with respect to Molnar has expired  
19 under Section 362(c)(2)(C) inasmuch as the Debtors received their discharge on July 6, 2016.  
20 All counsel agreed that the MRAS may be unnecessary under the circumstances and also agreed  
21 to continue the hearing on the MRAS to August 10, 2016, for status purposes.

22 <sup>9</sup> On its face, the allegations of Venetian’s complaint suggest that any continuing right to  
23 equitable relief that Venetian asserts under the confidentiality agreement would constitute a debt  
24 that has been discharged. Under Section 101(12), a debt consists of a liability on a claim. Under  
25 Section 101(5)(A), a claim includes a right to payment, and under Section 101(5)(B), a claim  
26 also includes a “right to an equitable remedy for breach of performance if such breach gives rise  
27 to a right to payment.” In this case, the complaint that Venetian filed in the State Court Action  
28 seeks both the equitable remedy of an injunction for breach of the confidentiality agreement as  
well as the payment of damages for the same breach. As both remedies appear to be claims  
under Section 101(5) that arise from the prepetition confidentiality agreement and therefore are  
debts under Section 101(12), Molnar’s discharge “from all debts that arose” before the  
bankruptcy under Section 727(b), appears to include Venetian’s claim for injunctive relief. The  
likelihood that all of the claims pled in the State Court Action have been discharged also makes  
it unlikely that Venetian can demonstrate a probability of success on the merits required for  
issuance of a preliminary injunction.

1 United States Magistrate Judge Hoffman granting the Subpoena Application over the objections  
2 of Venetian (“Subpoena Order”).<sup>10</sup> Among other things, the USDC found “that it would be  
3 fundamentally unfair to deprive O’Keeffe of the discovery she seeks,” see Subpoena Order at  
4 7:24-25, and that the confidentiality agreement “does not preclude O’Keeffe from obtaining the  
5 information she seeks.” Id. at 8:9-10. Additionally, the USDC found that “the discovery sought  
6 is clearly relevant and within the scope of O’Keeffe’s defense to Adelson’s libel claim,” see  
7 Subpoena Order at 8:25-26, and that “any distinction between private and public conversations  
8 that Molnar may have overheard in the course of his duties is a question of admissibility, and  
9 properly before the Hong Kong court.” Id. at 9:5-7.

10 Molnar agrees, of course, that his personal liability under the confidentiality agreement  
11 has been discharged.<sup>11</sup> Equally unsurprising, Molnar maintains that he will comply with any  
12 orders of the USDC or any other court requiring him to testify in connection with the litigation  
13 between O’Keeffe and Venetian’s principal. Molnar does not believe, however, that he is  
14 required to seek a protective order regarding the Subpoena, especially given that he took the  
15 position that O’Keeffe must seek relief from stay before proceeding with further discovery.<sup>12</sup>

16 Having considered the arguments of counsel, the court concludes that there is no case and  
17 controversy before the bankruptcy court that can be decided.<sup>13</sup> The court notes that counsel for

---

18  
19 <sup>10</sup> A copy of the Subpoena Order is attached as an exhibit to the O’Keeffe Opposition.

20 <sup>11</sup> If the State Court Action is remanded, any judgment that Venetian obtains from the  
21 State Court likely is void under Section 524(a)(1) and likely would constitute a violation of the  
22 discharge injunction under Section 524(a)(2). If the discharge injunction is violated, Venetian  
23 exposes itself to liability for actual damages. See, e.g., Estate of Brown v. Taggart (In re  
Taggart), 548 B.R. 275, 287 (B.A.P. 9th Cir. 2016)(damages available against creditor who knew  
24 the discharge injunction was applicable and intended the actions that violated the discharge  
25 injunction).

26 <sup>12</sup> O’Keeffe acknowledges that it filed the MRAS because of Molnar’s legal position  
27 regarding the automatic stay even though O’Keeffe does not believe the automatic stay even  
28 applies. See MRAS at ¶¶ 18-20.

<sup>13</sup> If the court ruled substantively on the Preliminary Injunction Motion, it likely would  
deny the request because there is little likelihood of success on the merits of Venetian’s claims  
due to the USDC’s findings in the Subpoena Order. Moreover, Venetian has failed to establish a  
causal connection between the irreparable injury allegedly suffered and the relief requested: it

1 Venetian, O’Keeffe and Molnar all consented at the hearing to the bankruptcy court deciding the  
2 Preliminary Injunction Motion. While the parties’ agreement on at least one issue may be  
3 refreshing, that agreement cannot confer jurisdiction on this court to render an advisory opinion  
4 regarding a deposition that has not yet occurred in connection with a libel action between non-  
5 debtor parties pending in Hong Kong.

6 At the time the Removal Notice was filed on May 24, 2016, the Trustee already had  
7 determined that there were no non-exempt assets available for distribution to creditors in this  
8 bankruptcy case. At the time the Removal Notice was filed, the USDC had already determined  
9 that the confidentiality agreement could not be enforced to preclude O’Keeffe from obtaining  
10 information from Molnar. At the time the Removal Notice was filed, the deadline to object to  
11 dischargeability of debt had not expired, but issuance of the Subpoena Order likely precluded  
12 Venetian from establishing that Molnar’s conduct is the proximate cause of any  
13 nondischargeable damages. Thus, Venetian’s failure to commence an adversary proceeding to  
14 determine dischargeability of debt under Section 523 is not dispositive, but is notable primarily  
15 for its futility once the Subpoena Order was issued authorizing O’Keeffe to serve the Subpoena  
16 requiring Molnar to testify.

17 The absence of any impact of the State Court Action on the Debtors’ fresh start runs  
18 parallel with the absence of any impact on the Debtors’ creditors. The Trustee already has  
19 determined the Chapter 7 case to be a no-asset proceeding that will result in no distribution to  
20 any creditors, including Venetian. The enforceability of the confidentiality agreement as to

21 \_\_\_\_\_  
22 concedes that Molnar would not be in violation of the confidentiality agreement if he is subject  
23 to a court order requiring him to disclose information gained during his employment. In this  
24 case, the USDC already has issued the Subpoena Order requiring him to do exactly that.  
25 Compare Garcia v. Google, Inc., 786 F.3d 733, 748-49 (9th Cir. 2015)(Watford, J.,  
26 concurring)(plaintiff bears the burden of showing that “irreparable injury is likely in the absence  
27 of” the requested injunction). At the hearing, the court asked whether Molnar’s “best efforts”  
28 could take the form of refusing to answer certain questions at his deposition. No one disputed  
that Molnar would be subject to contempt sanctions for disobedience of the Subpoena, thereby  
implicating the Forced Disclosure provision of the confidentiality agreement. Thus, although the  
Preliminary Injunction Motion arguably is not a collateral attack on the Subpoena Order, the  
USDC’s issuance of that order negates any causal connection between the irreparable injury  
asserted and a denial of preliminary injunctive relief.



1 Molnar already has been determined by the Subpoena Order and the enforcement of the same or  
 2 similar language as to other parties has been the subject of numerous other orders and  
 3 proceedings. Under these circumstances, resolution of the State Court Action has no bankruptcy  
 4 purpose and the State Court has concurrent jurisdiction to resolve any remaining issues.<sup>14</sup> The  
 5 State Court, like this bankruptcy court, has the benefit of the Subpoena Order issued by the  
 6 USDC that already addressed Venetian's rights under the confidentiality agreement. The court  
 7 therefore concludes that the State Court Action should be remanded to the State Court pursuant  
 8 to 28 U.S.C. § 1452(b).

9 **IT IS THEREFORE ORDERED** that Venetian Casino Resort, LLC's Motion for  
 10 Preliminary Injunction, Adversary Docket No. 4, be, and the same hereby is, **DENIED**  
 11 **WITHOUT PREJUDICE.**

12 **IT IS FURTHER ORDERED** that the civil action styled as Venetian Casino Resort  
 13 LLC v. Jonathan Allan Molnar, Case No. A-16-733164-C, be, and the same hereby is,  
 14 **REMANDED** to the Eighth Judicial District Court, Clark County, Nevada. Upon completion of  
 15 the remand, the Clerk of the Court shall close Adversary Proceeding No. 16-01074-MKN.

16 **IT IS FURTHER ORDERED** that the scheduling conference in the above-captioned  
 17 adversary proceeding set for October 20, 2016, at 10:00 a.m., is **VACATED.**

18  
 19 Copies sent to all parties via CM/ECF ELECTRONIC FILING

20 ///

21 \_\_\_\_\_  
 22 <sup>14</sup> A discharge in bankruptcy is, under Nevada law, an affirmative defense that must be  
 23 raised in the answer to a complaint under NRCP 8(c). That is not the situation in federal  
 24 practice. Compare FED.R.CIV.P. 8(c)(1) (Advisory Committee Note on 2010 amendment  
 25 deleting discharge in bankruptcy from list of affirmative defenses). The Nevada pleading  
 26 requirement is unnecessary and perhaps unenforceable in light of Section 524(a)(1) which, as a  
 27 matter of federal bankruptcy law, voids any judgment determining a personal liability of a debtor  
 28 with respect to any debt discharged under Section 727. Moreover, under Section 524(a)(2), the  
 discharge operates as an injunction against the continuation of any action to collect, recover or  
 offset any such debt as a personal liability of the debtor. Because state courts have concurrent  
 jurisdiction to determine whether a debt has been discharged in bankruptcy, see 4 Collier on  
 Bankruptcy, supra, ¶ 523.03, the State Court can decide whether Venetian's continued pursuit of  
 injunctive relief on remand, if it decides to do so, is barred by Section 524(a)(2).

1 Copies sent via BNC to:

2 JONATHAN ALLAN MOLNAR  
3 12049 ALZINA COURT  
4 LAS VEGAS, NV 89138

5 REGIONAL JUSTICE CENTER  
6 ATTN: CLERK OF COURT  
7 200 LEWIS AVENUE  
8 LAS VEGAS, NV 89155

9 SAMUEL A. SCHWARTZ, ESQ.  
10 6623 LAS VEGAS BLVD. SO., STE 300  
11 LAS VEGAS, NV 89119

12 ERIC J. FEDER, ESQ.  
13 DAVIS WRIGHT TREMAINE, LLP  
14 1251 AVENUE OF THE AMERICAS, 21<sup>ST</sup> FLOOR  
15 NEW YORK, NY 10020

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
###