



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
April 22, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 17-14004-MKN
)	Chapter 7
DEAN TYLER BUSH,)	
)	Date: April 17, 2019
Debtor.)	Time: 2:30 p.m.
)	

**ORDER ON AMENDED JUDGEMENT DEBTOR'S MOTION TO PAY
JUDGEMENT IN INSTALLMENTS/MODIFICATION OF ORDER¹**

On April 17, 2019, the court heard the Amended Judgement Debtor's Motion to Pay Judgement in Installments/Modification of Order ("Motion") brought by Las Vegas Hospitalists ("LVH"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On July 25, 2017, Debtor filed a voluntary Chapter 7 bankruptcy petition along with his schedules of assets and liabilities, Statement of Financial Affairs, and other required information. (ECF No. 1). The bankruptcy petition was prepared and filed on the Debtor's behalf by the Isso and Hughes Law Firm.

On October 24, 2017, an order was entered granting Debtor his Chapter 7 discharge. (ECF No. 19).

¹ In this Order, all references to "ECF No." are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to "Section" 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.

1 On October 27, 2017, a Final Decree was entered discharging the assigned Chapter 7
2 trustee of any further duties and closing the case. (ECF No. 21).

3 On June 29, 2018, Debtor filed a motion to reopen his Chapter 7 case (“Reopening
4 Motion”). (ECF No. 22).

5 On July 2, 2018, an order was entered reopening the case. (ECF No. 24).

6 On August 24, 2018, a motion for sanctions was filed by Debtor for violation of the
7 discharge injunction (“Sanctions Motion”), and was noticed to be heard on October 3, 2018.
8 (ECF Nos. 25 and 26).

9 On October 1, 2018, an opposition to the Sanctions Motion was filed by LVH. (ECF No.
10 30). At the October 3 hearing, the matter was continued to October 17, 2018, to permit a
11 response to be filed by the Debtor.

12 On October 9, 2018, Debtor filed a reply to the LVH opposition. (ECF No. 32).

13 On October 17, 2018, the Sanctions Motion was heard and taken under submission.

14 On October 19, 2018, an order was entered denying sanctions for an alleged violation of
15 the automatic stay, but granting sanctions for violation of the discharge injunction (“Preliminary
16 Order”). (ECF No. 33). The order also scheduled a status conference for November 14, 2018,
17 for the purpose of setting an evidentiary hearing limited to the amount of damages and attorney’s
18 fees sought by the Debtor (“Evidentiary Hearing”).

19 On December 17, 2018, an order was entered scheduling an Evidentiary Hearing for
20 February 26, 2019, and setting a pretrial conference for February 13, 2019. (ECF No. 42).

21 On February 13, 2019, the pretrial conference was completed.

22 On February 26, 2019, the Evidentiary Hearing was completed.

23 On March 1, 2019, an order on the Sanctions Motion was entered on this court’s docket
24 (“Sanctions Order”). (ECF Nos. 50 and 52).²

25 On March 14, 2019, the instant Motion was filed and noticed for hearing for April 17,
26

27 ² On March 5, 2019, an errata was entered correcting the title of the court’s written ruling
28 from “Memorandum Decision” to “Order.” Under FRBP 8002(a)(1), a party in interest has
fourteen calendar days to appeal from the entry of a bankruptcy court judgment or order. In this
instance, that appeal period for the Sanctions Order expired no later than March 19, 2019.

1 2019. (ECF Nos. 56 and 58).

2 On April 13, 2019, an opposition to the Motion was filed by Debtor (“Opposition”).
3 (ECF No. 60).

4 DISCUSSION

5 The Sanctions Order requires LVH to pay \$5,000.00 to the Debtor as a non-
6 compensatory fine. The Sanctions Order requires LVH to pay \$6,760.00 to Debtor’s counsel as
7 attorney’s fees and costs. The Sanctions Orders requires LVH to pay both amounts, in certified
8 funds, to Debtor’s counsel, no later than April 1, 2019.

9 The instant Motion was filed on March 14, 2019, well before the applicable deadline. No
10 appeal of the Sanctions Order was taken, however, nor was a stay of the Sanctions Order sought
11 or obtained by LVH. Thus, if LVH has not paid the required amounts to the Debtor or to
12 Debtor’s counsel by the April 1, 2019, deadline, it is in violation of the Sanctions Order.

13 At the hearing, counsel for LVH represented that \$900.00 had been paid. Debtor’s
14 counsel represented that no such payment had been received. No admissible evidence of such
15 payment has been provided by LVH and none appears in the record. Regardless of whether that
16 alleged payment was made, there is no dispute that LVH has failed to pay at least \$10,860.00 of
17 the amounts required by the Sanctions Order.

18 By the instant Motion, LVH seeks permission to pay the required amounts in twelve
19 installment payments, with interest at the Nevada state judgment rate; payments would
20 commence on March 30, 2019, with the first installment in the amount of \$972.50.³ See Motion
21 at 4:15-24. The alleged legal basis for the request is Section 105(a) which permits the
22 bankruptcy court to enter any order “necessary or appropriate” to carry out the provisions of the
23 Bankruptcy Code. 11 U.S.C. § 105(a). The alleged factual basis for the requested installment
24 payments apparently is that the medical billing service used by LVH, known as Expert Medical
25 Services (“EMS”), “is held responsible for their error and to reimburse this judgement to LVH.”
26 Id. at 3:21-23. As between EMS and LVH, the former apparently has taken or accepted

27 ³ This might explain why LVH’s counsel asserted at the April 17, 2019, hearing in this
28 matter, that \$900.00 already had been paid. If \$972.50 actually had been paid on March 30,
2019, however, it likely would have been received by the Debtor’s counsel before the hearing.

responsibility for the discharge violation on which the Sanctions Order is based. Because of this arrangement between LVH and EMS, LVH alleges that it would be a “severe hardship” to pay the amounts required by the Sanctions Order by the April 1, 2019 deadline expressly ordered by the court. Id. at 3:12-26.⁴

Unfortunately, there is no evidence in the record that payment of the amounts specified in the Sanctions Order imposes any hardship whatsoever to LVH. Although the owner of LVH previously denied responsibility to the violation of the discharge injunction, see Valera Declaration at ¶ 11, he has offered no details of his financial condition nor that of LVH. Whatever indemnity, reimbursement, or other claim LVH may have against EMS is immaterial to LVH’s obligations to the Debtor and Debtor’s counsel under the Sanctions Order. Thus, the failure of LVH to comply with the April 1, 2019, deadline is inexcusable.

Because this ill-conceived Motion has required the Debtor and the Debtor’s counsel to respond, the court will supplement the non-compensatory fine by the amount of \$500.00. The court also will require LVH to pay additional attorney’s fees. Although Debtor’s counsel requests an equally ill-conceived amount of \$2,000.00 for preparing a four-page response reflecting zero legal research, see Opposition at 4:17-19, the court will allow to such counsel two hours of services at a \$325.00 hourly rate.⁵

IT IS THEREFORE ORDERED that the Amended Judgement Debtor’s Motion to Pay Judgement in Installments/Modification of Order, brought by Las Vegas Hospitalists, Docket No. 56, be, and the same hereby is, **DENIED**.

IT IS FURTHER ORDERED that Las Vegas Hospitalists shall pay the amount of \$5,000.00 to the above-captioned debtor, Dean Tyler Bush, as a non-compensatory fine.

⁴ Attached to the Motion is a Declaration of Hassan Hassanali dba Expert Medical Services (“Hassanali Declaration”). In connection with the underlying Sanctions Motion, LVH submitted the Affidavit/Declaration of Amit Valera (“Valera Declaration”) (ECF No. 30), who apparently is the owner of LVH.

⁵ The court previously having concluded that LVH intentionally violated the discharge injunction under Section 524(a)(2), see Preliminary Order at 6:13 to 7:12, the court concludes that the imposition of an additional non-compensatory fine and the award of additional attorney’s fees are necessary and appropriate under Section 105(a).

1 **IT IS FURTHER ORDERED** that Las Vegas Hospitalists shall pay the amount of
2 \$6,760.00 to counsel for Dean Tyler Bush, as attorney's fees and costs.

3 **IT IS FURTHER ORDERED** that Las Vegas Hospitalists shall pay the amount of
4 \$500.00 to the above-captioned debtor, Dean Tyler Bush, as an additional non-compensatory
5 fine in connection with the instant motion.

6 **IT IS FURTHER ORDERED** that Las Vegas Hospitalists shall pay the amount of
7 \$650.00 to counsel for Dean Tyler Bush, as additional attorney's fees in connection with the
8 instant motion.

9 **IT IS FURTHER ORDERED** that respondent Las Vegas Hospitalists shall pay all of
10 the amounts set forth in this Order, in certified funds, **no later than May 7, 2019.** Such certified
11 funds must be received by counsel for Dean Tyler Bush no later than such deadline. Any funds
12 previously received from Las Vegas Hospitalists must be credited to the total amount required by
13 this Order.

14 **IT IS FURTHER ORDERED** that counsel for Dean Tyler Bush must file and serve a
15 statement acknowledging receipt of such payments no later than five business days after receipt
16 of the full payment amount.

17 Copies sent via CM/ECF ELECTRONIC FILING

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19 Copies sent via BNC to:
20 DEAN TYLER BUSH
21 4621 MANCILLA ST.
22 LAS VEGAS, NV 89130

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