



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
March 12, 2018

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No. 17-14419-MKN
	)	Chapter 7
PEDRO FAVELA,	)	
	)	Date: March 7, 2018
Debtor.	)	Time: 2:30 p.m.
	)	

**ORDER ON MOTION FOR SANCTIONS AGAINST MITZIE KRAMPERT  
AND KEN KRAMPERT FOR VIOLATION OF DISCHARGE INJUNCTION<sup>1</sup>**

On March 7, 2018, the court heard the Motion for Sanctions Against Mitzie Krampert and Ken Krampert for Violation of Discharge Injunction (“Sanctions Motion”). The appearances of counsel and the parties were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

Pedro Favelo (“Debtor”) filed a Chapter 13 petition in this district on October 4, 2015, denominated Case No. 15-15699 (“First Case”). Debtor resided at 6142 Morning Splendor Way, Las Vegas, Nevada (“Residence”). In late 2016, Debtor attempted to modify his loan against the Residence, but a mortgage modification mediation was unsuccessful. In early 2017, the lender filed a motion for relief from the automatic stay so that it could pursue foreclosure remedies

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the 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. All references to “FRCP” are to the Federal Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence.

1 under state law. Prior to the noticed hearing on the lender's motion, an order was entered on  
2 March 29, 2017, denying confirmation of a proposed Chapter 13 plan and dismissing the First  
3 Case. As a result of the dismissal, the automatic stay arising in the First Case terminated as a  
4 matter of law under Section 362(c).

5 On August 14, 2017, Debtor commenced the above-captioned voluntary Chapter 7  
6 proceeding ("Second Case"). On his bankruptcy petition, Debtor indicated that he was living at  
7 6142 Morning Splendor Way, Las Vegas, Nevada, i.e., the Residence. (ECF No. 1).

8 Debtor's schedules of assets and liabilities ("Schedule(s)") and Statement of Financial  
9 Affairs ("SOFA") were attached to his bankruptcy petition. On his property Schedule A/B,  
10 Debtor attested that he had no legal or equitable interest in any residence, building, land, or  
11 similar property. On his unsecured creditor Schedule E/F, Debtor listed Chase Mortgage as  
12 having a claim in an unknown amount based on a foreclosure. On the same Schedule, Debtor  
13 also listed Ken and Mitzie Krampert ("Kramperts"), as well as the Las Vegas Justice Court, as  
14 being entitled to notice in connection with the Chase Mortgage claim. On his Schedule G,  
15 Debtor listed no executory contracts or unexpired leases of personal or real property. On his  
16 Schedule J, Debtor listed his monthly rental or home ownership expenses at \$0.00. On Part 4,  
17 Item 9 of his SOFA, Debtor listed an eviction proceeding that had been concluded in the Las  
18 Vegas Justice Court in an action commenced by the Kramperts versus the Debtor, denominated  
19 Case No. 17C011002 ("Eviction Action"). On Part 4, Item 10 of his SOFA, Debtor disclosed  
20 that Chase Mortgage had foreclosed on the Residence in 2017. Both the Schedules and the  
21 SOFA are electronically signed by the Debtor under penalty of perjury.

22 On August 17, 2017, three calendar days after the bankruptcy petition, Schedules, and  
23 SOFA were filed, a notice was served to all creditors that the case was assigned for  
24 administration to Chapter 7 bankruptcy trustee, Victoria L. Nelson ("Trustee"). (ECF Nos. 5 and  
25 8). The same notice indicated that (1) a meeting of creditors would be held on September 22,  
26 2017, (2) any objections to the Debtor's discharge or to the dischargeability of debts must be  
27 filed by November 21, 2017, and (3) creditors need not file any proofs of claim unless otherwise  
28 notified by the court.

1 On August 22, 2017, the Kramperts filed a motion for relief from stay to complete efforts  
2 to evict the Debtor from the Residence. (ECF No. 10).

3 On September 22, 2017, an order was entered granting relief from stay. (ECF No. 15).<sup>2</sup>

4 On September 28, 2017, an initial asset report was docketed by the Trustee (ECF No. 16),  
5 but the docket does not reflect that a notice directing creditors to file proofs of claim was issued.

6 On November 21, 2017, the deadline expired for filing complaints objecting to discharge  
7 under Section 727 and for determination of dischargeability of debts under Section 523, with no  
8 creditors or other parties in interest commencing an adversary proceeding as required by FRBP  
9 7001(4 and 6).<sup>3</sup> Accordingly, on November 22, 2017, an Order of Discharge was entered  
10 granting a Chapter 7 discharge under Section 727(a). (ECF No. 18).

11 On January 15, 2018, a “no asset” report was docketed by the Trustee attesting that there  
12 were no funds available for payment of any claims in the case. (ECF No. 20).

13 On January 16, 2018, a final decree was entered closing the Chapter 7 case. (ECF No.  
14 21).

15 On January 23, 2018, Debtor filed an ex parte motion to reopen the case (ECF No. 22)  
16 which was granted by an order entered on January 25, 2018. (ECF No. 24).

17 On January 29, 2018, Debtor filed the instant Sanctions Motion alleging that the  
18 Kramperts have taken actions in violation of the discharge injunction. (ECF No. 25).

19 On February 20, 2018, the Kramperts filed an opposition to the Sanctions Motion that  
20 includes a “countermotion” seeking sanctions against Debtor’s counsel. (ECF No. 29).

## 21 **APPLICABLE LEGAL STANDARDS**

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23 <sup>2</sup> Because the First Case had been dismissed within one year of the commencement of the  
24 Second Case, the automatic stay in the Second Case was in effect for only 30 days under Section  
25 362(c)(3)(A). Debtor did not obtain a continuation of the automatic stay by filing a motion  
26 under Section 362(c)(3)(B), and the automatic stay therefore terminated as of September 13,  
27 2017. The stay terminated as to the Debtor as well as the Residence. See Reswick v. Reswick  
(In re Reswick), 446 B.R. 362, 373 (B.A.P. 9th Cir. 2011).

28 <sup>3</sup> The failure to timely file a complaint under Section 523 bars a creditor from later  
seeking an extension of the deadline proscribed by FRBP 4007. See Anwar v. Johnson (In re  
Anwar), 720 F.3d 1183, 1187-88 (9th Cir. 2013).

Under Section 101(12), a “debt” means a “liability on a claim.” Under Section 101(5)(A), a “claim” consists of a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, . . . disputed, undisputed, legal, equitable, secured, or unsecured . . .” 11 U.S.C. § 101(5)(A) (emphasis added).

Under Section 727(b), a discharge in Chapter 7 granted under Section 727(a) applies to “all debts that arose before the date” the bankruptcy petition was filed, “whether or not a proof of claim based on any such debt . . . is filed,” except for the types of debts specified in Section 523. 11 U.S.C. § 727(b) (emphasis added). Under Section 524(a), the effect of a bankruptcy discharge is to void any judgment and to enjoin any acts to pursue a discharged debt as a “personal liability of the debtor.” 11 U.S.C. § 524(a)(1 and 2) (emphasis added).

Section 524 provides, in relevant part, that a bankruptcy discharge “voids any judgment at any time obtained, to the extent such judgment is a determination of the personal liability of the debtor with respect to any debt discharged . . .” 11 U.S.C. § 524(a)(1). Section 524 also provides in relevant part that the bankruptcy discharge “operates as an injunction against the commencement or continuation of an action, . . . or an act, to collect, recover or offset any such debt as a personal liability of the debtor . . .” 11 U.S.C. § 524(a)(2).

A debtor who asserts that the discharge injunction has been violated must seek relief from the bankruptcy court by motion rather than through commencement of an adversary proceeding. See Barrientos v. Wells Fargo Bank, N.A., 633 F.3d 1186, 1190 (9th Cir. 2011).

The Bankruptcy Appellate Panel for the Ninth Circuit (“BAP”) recently summarized the standards applicable to the enforcement of the discharge injunction as follows:

“A party who knowingly violates the discharge injunction under § 524(a)(2) can be held in contempt under § 105(a).” In re Taggart, 548 B.R. at 286. The Ninth Circuit follows a two-part test to determine whether the contemnor knowingly and willfully committed a violation of the discharge injunction: “the movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction.” Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (quoting Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002)).

First, the movant must prove that the contemnor knew that the discharge injunction was applicable to his claim:

[T]he Ninth Circuit has crafted a strict standard for the actual knowledge

requirement in the context of contempt before a finding of willfulness can be made. This standard requires evidence showing the alleged contemnor was aware of the discharge injunction and aware that it applied to his or her claim. Whether a party is aware that the discharge injunction is applicable to his or her claim is a fact-based inquiry which implicates a party's subjective belief, even an unreasonable one.

In re Taggart, 548 B.R. 288.

Second, the contemnor must have intended the action that violated the injunction. "The focus is on whether the creditor's conduct violated the injunction and whether that conduct was intentional; it does not require a specific intent to violate the injunction." Desert Pine Villas Homeowners Ass'n v. Kabiling (In re Kabiling), 551 B.R. 440, 445 (9th Cir. BAP 2016). We have stated:

the analysis concerning a "willful" violation of the discharge injunction is the same as a finding of willfulness in connection with violation of the automatic stay under § 365(k) [sic]. In connection with the second prong's intent requirement, we have previously observed that "the bankruptcy court's focus is not on the offending party's subjective beliefs or intent, but on whether the party's conduct in fact complied with the order at issue."

In re Taggart, 548 B.R. at 288 (quoting Rosales v. Wallace (In re Wallace), BAP No. NV-11-1681-KiPaD, 2012 WL 2401871, at \*5 (9th Cir. BAP June 26, 2012)).

"The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply." Id. at 286 (quoting In re Bennett, 298 F.3d at 1069). "[E]ach prong of the Ninth Circuit's two-part test for a finding of contempt in the context of a discharge violation requires a different analysis, and distinct, clear, and convincing evidence supporting that analysis, before a finding of willfulness can be made. This is consistent with the Ninth Circuit's reluctance to hold an unwitting creditor in contempt." Id. at 288 (citation and internal quotation marks omitted).

Ocwen Loan Servicing, LLC v. Marino (In re Marino), 577 B.R. 772, 782-83 (B.A.P. 9th Cir. 2017).

## DISCUSSION

Debtor requests that the Kramperts be sanctioned "for . . . continual harassment and violation of the discharge injunction and have them dismiss any action against the Debtor." Sanctions Motion at 5:9-10. Attached to the Sanctions Motion is a verification whereby the Debtor attests that all of the statements made in the motion are true except as to statements made

on information and belief. Id. at 6. Attached to the Sanctions Motion are two exhibits.<sup>4</sup> Exhibit “1” consists of copies of pleadings and papers filed in the Eviction Action. Those items suggest that the foreclosure was completed on May 18, 2017, after the First Case was dismissed and prior to the commencement of the Second Case.

Exhibit “2” consists of copies of pleadings and papers filed in a small claims proceeding in the North Las Vegas Township Justice Court (“Justice Court”) by the Kramperts against the Debtor and his spouse, denominated Case No. 17AN000156 (“Small Claims Action”). The docket in the Small Claims Action reflects that (1) the proceeding was commenced on November 20, 2017, (2) a hearing was held by the Justice Court on February 7, 2018, (3) the Debtor, his spouse, his bankruptcy attorney, and the Kramperts appeared at the hearing, and (4) the matter was continued to June 13, 2018, pending the outcome of proceedings before this bankruptcy court.<sup>5</sup> The materials included in Exhibit “2” indicate that the complaint in the Small Claims Action was served on the Debtor on January 7, 2018. Thus, even though the Small Claims Action was commenced on November 20, 2017, the Debtor apparently was not aware of it until he was served with the complaint on January 7, 2018. Additionally, on February 7, 2018, any further proceedings on the complaint were stayed because the Justice Court continued the Small Claims Action until June 13, 2018.<sup>6</sup>

Exhibit “2” also includes a copy of a pleading filed by the Kramperts on January 17, 2018, entitled “Documents and Arguments in Support of Small Claims Complaint.” From this

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<sup>4</sup> Both the Debtor and the Kramperts submitted copies of documents attached as exhibits to their respective papers. None of the documents are properly authenticated as required by FRE 901, but neither of the parties object to their admission into evidence. The court therefore considers the exhibits to the appropriate extent of their probative value.

<sup>5</sup> The court takes judicial notice of the docket in the Small Claims Action pursuant to FRE 201(b). See Kismet Acquisition, LLC v. Diaz-Barba (In re Icenhower), 755 F.3d 1130, 1142 (9th Cir. 2014)(judicial notice may be taken of “court filings and other matters of public record.”).

<sup>6</sup> The date upon which the Debtor became aware of the Small Claims Action would be relevant to the duration of any emotional distress allegedly suffered as a result of a violation of the discharge injunction.

document (“Supporting Document”), it appears that the Kramperts are seeking to recover: (1) the fair rental value of the Residence commencing after the Second Case was filed through the date that the premises were vacated (“Postpetition Rent”)<sup>7</sup>, and (2) damages for various repairs to the Residence (“Repairs”).<sup>8</sup>

Debtor maintains that the commencement of the Small Claims Action violates the discharge injunction and warrants the imposition of sanctions against the Kramperts. The Kramperts contend that their pursuit of damages for the Postpetition Rent and the Repairs does not violate the discharge injunction. Alternatively, they argue that any violation of the discharge injunction was not intentional. Moreover, the Kramperts believe that the Sanctions Motion is frivolous and that Debtor’s counsel should be sanctioned pursuant to FRCP 11(b), applicable in bankruptcy proceedings pursuant to FRBP 9011.

The court has considered the written and oral arguments and representations of the parties, as well as the record presented and matters for which the court may take judicial notice. Based on that consideration, the court concludes that the Sanctions Motion should be denied without prejudice.

As an initial matter, the court denies the Kramperts’ request for sanctions under FRBP 9011. Under FRBP 9011(c)(1)(A), such a request must be made by a separate motion and must be preceded by a request to the opposing party that the challenged paper, claim, contention or allegation be withdrawn. Moreover, the opposing party must be given at least 21 days to

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<sup>7</sup> The Kramperts apparently seek to recover for 50 days of rent at \$62.67 per day for a total of \$3,133. If the 50 days include the portion of the day the Debtor filed his bankruptcy petition, i.e., August 14, 2017, the fiftieth day would have been October 2, 2017. If the petition date is not included, then the fiftieth day would have been October 3, 2017. It therefore appears that the Debtor vacated the Residence no later than October 3, 2017. The court makes no factual finding on the exact date the Debtor vacated the Residence, however, because no evidence has been offered.

<sup>8</sup> The Supporting Document states that “Plaintiffs seek redress for lost rents, cost of repair of damage and vandalism to the home, stolen personal property and various other expenses directly attributable to Defendants” and then proceeds to list five specific items seemingly encompassed within the demand for Repairs. See Supporting Document at 2:10-19. Exhibit “2” includes copies of various repair receipts, as well as copies of property tax and utility bills. The latter items would not be included as costs of repair for damages to the premises.



1 withdraw the challenged item. Here, the Kramperts acknowledged at the hearing on the  
2 Sanctions Motion that no such request had been made to Debtor's counsel. As a result, both the  
3 separate motion and the 21-day "safe harbor" requirement have not been met. Therefore, the so-  
4 called "countermotion" under FRBP 9011 must be denied.

5 The Sanctions Motion also must be denied with respect to the claim for Postpetition  
6 Rent. In this case, the Debtor was not on title to the Residence when the Second Case was  
7 commenced. Moreover, the Debtor was not the tenant on an unexpired lease with the Kramperts  
8 when the Second Case was commenced. Because the Debtor was not on title and had no  
9 leasehold interest in the Residence, he was simply in possession of the Residence on the petition  
10 date. His continued occupancy of the Residence was the equivalent of an ongoing trespass.

11 Although the Debtor's First Case was filed under Chapter 13, his Second Case was filed  
12 under Chapter 7. In Chapter 13, a debtor's earnings after the case is commenced constitutes  
13 property of the bankruptcy estate under Section 1306(a)(2), which is protected by the automatic  
14 stay for the duration of the case under Section 362(a). Those earnings are protected because they  
15 typically are devoted to payment of creditors through the Chapter 13 plan under Section  
16 1325(b)(1)(A).<sup>9</sup> In a Chapter 7 proceeding, however, a debtor's earnings after the case is  
17 commenced are excluded from property of the estate under Section 541(a)(6) and are not  
18 committed to payment of creditors over time. As a result, the future income of a Chapter 7  
19 debtor is not protected by the automatic stay from the claims of his postpetition creditors.  
20 Allowing a Chapter 7 debtor to keep his postpetition income in spite of taking goods or services  
21 from his postpetition creditors would be the equivalent of a "free lunch" that bankruptcy relief  
22 simply does not provide. Thus, a Chapter 7 bankruptcy filing does not prevent an individual  
23 debtor from using his postpetition income to pay his ongoing living expenses, including housing  
24 and related costs.

25 In a Chapter 13, Debtor might have been able to assert that remaining in the Residence is

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26  
27 <sup>9</sup> Similarly, when an individual files a Chapter 11 reorganization proceeding, the debtor's  
28 earnings after the case is commenced constitutes property of the bankruptcy estate under Section  
1115. Like a Chapter 13 proceeding, an individual Chapter 11 debtor's future earnings may be  
committed to plan payments if an unsecured creditor objects. See 11 U.S.C. § 1129(a)(15).



1 necessary to an effective plan of rehabilitation, but a similar assertion cannot be made in a  
 2 Chapter 7 liquidation. In Chapter 13, certain consumer debts for property or services [1] may be  
 3 incurred after the bankruptcy is commenced under Section 1305(a)(2), [2] may be provided for  
 4 in a confirmed plan under Section 1322(b)(6), and [3] may be discharged through completion of  
 5 plan payments under Section 1328(a). Debtor's Second Case is not a Chapter 13 proceeding,  
 6 however, for which the debts he incurred after commencement of the case might have been  
 7 subject to discharge by completing a Chapter 13 plan.<sup>10</sup> Under Section 727(b), a Chapter 7  
 8 discharge applies only to debts that were incurred before the bankruptcy was filed, but not to  
 9 debts incurred after the bankruptcy was filed. Because the claim for Postpetition Rents was not  
 10 discharged under Chapter 7 by the Second Case, the Kramperts' request for Postpetition Rents in  
 11 the Small Claims Action is not prohibited by the discharge injunction.

12 The Sanctions Motion also will be denied without prejudice with respect to the claim for  
 13 Repairs. The Kramperts cannot seek recovery for Repairs for any damages that were incurred  
 14 prior to the commencement of the Second Case. The record indicates that the Kramperts took  
 15 title to the Residence on May 18, 2017, through a successful bid at a foreclosure sale. There is no  
 16 dispute that the Debtor was occupying the Residence at that time, as well as on August 14, 2017,  
 17 when the Second Case was filed. There also is no apparent dispute that the Debtor did not  
 18 vacate the Residence until October 3, 2017 at the latest. See discussion at note 7, supra. There  
 19 is nothing in the record to establish, however, exactly when the alleged damage was done to the  
 20 Residence.

21 If the Residence was damaged by the Debtor prior to the foreclosure sale, the Kramperts  
 22 apparently took the risk by purchasing a distressed property without the benefit of an interior  
 23 inspection.<sup>11</sup> If the Residence was damaged by the Debtor after the foreclosure sale but before  
 24 \_\_\_\_\_

25 <sup>10</sup> Similarly, when an individual files a Chapter 11 reorganization proceeding, debts  
 26 incurred after commencement of the case may be [1] allowed as administrative claims under  
 27 Section 503(b)(1)(A), [2] provided for in a Chapter 11 plan under Section 1123(a)(1), and [3]  
 discharged upon completion of confirmed plan payments under Section 1141(d)(5).

28 <sup>11</sup> There is nothing in the record indicating whether the lender or the Kramperts inspected  
 the Residence at any time prior to the foreclosure sale.

the filing of the Second Case, the Kramperts' claim for such damages was discharged under Section 727(a). It is clear that no adversary proceeding was commenced alleging the commission of willful and malicious injury to property resulting in a debt that is nondischargeable under Section 523(a)(6). If the Residence was damaged by the Debtor after the filing of the Second Case, however, then the Kramperts' claim for Repairs would be substantially similar to their claim for Postpetition Rent: the claim is for a debt that arose after commencement of Chapter 7 and was not discharged by the Second Case. Only in the latter instance would the assertion of the claim for Repairs against the Debtor in the Small Claims Action not be prohibited by the discharge injunction. In other words, pursuit of a claim for Repairs based on damages to the Residence that occurred after the Second Case was filed is not barred by the Debtor's discharge. Any other claim for Repairs is barred and continued pursuit of such a claim may be the subject of a renewed request for sanctions.<sup>12</sup>

**IT IS THEREFORE ORDERED** that the Motion for Sanctions Against Mitzie Krampert and Ken Krampert for Violation of Discharge Injunction, Docket No. 25, be, and the same hereby is, **DENIED** as provided herein.

**IT IS FURTHER ORDERED** that the countermotion for sanctions filed by Mitzie and Ken Krampert, Docket No. 29, be, and the same hereby is, **DENIED**.

Copies sent to all parties via CM/ECF ELECTRONIC FILING

Copies sent via BNC to:

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<sup>12</sup> In the event that a renewed request for sanctions is made, it should not be difficult to demonstrate that the Kramperts had knowledge that the discharge injunction applies to their claims.