



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
April 01, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 18-14694-MKN
) Chapter 7
JAIRO ALEJANDRO RODRIGUEZ,)
fdba RUTISHAUSER, LLC DBA NLV PAIN)
MANAGEMENT & URGENT CARE,)
dba CAF MEDICAL, LLC DBA INJURY &)
CHRONIC PAIN CENTER,) Date: March 27, 2019
dba INJURY MEDICAL CONSULTANTS,) Time: 1:30 p.m.
LLC.,)
) Debtor.

ORDER REGARDING MOTION TO LIFT THE PERTINENT AUTOMATIC STAY¹

On March 27, 2019, the court heard the Motion to Lift the Pertinent Automatic Stay (“Motion”) brought by Michael Ladner. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On August 6, 2018, Jairo Alejandro Rodriguez (“Debtor”) filed a “skeleton” voluntary Chapter 7 petition (“Petition”). (ECF No. 1). On August 7, 2019, a notice of the Chapter 7 filing (“Bankruptcy Notice”) was issued scheduling a meeting of creditors for September 12, 2018, and notifying creditors of the appointment of a Chapter 7 trustee. (ECF Nos. 40 and 44). The Chapter 7 proceeding was assigned for administration to a panel Chapter 7 trustee, Lenard E.

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 “FRE” are to the Federal Rules of Evidence.

1 Schwartzer (“Trustee”). The Bankruptcy Notice also specified that the deadline for any creditor
 2 to object to the Debtor’s discharge, or, to determine dischargeability of any debt, is November
 3 13, 2018.

4 On August 17, 2018, Debtor filed his schedules of assets and liabilities (“Schedules”) and
 5 statement of financial affairs (“SOFA”), and other required information. (ECF No. 46). Both
 6 the Schedules and SOFA are signed by the Debtor under penalty of perjury. According to his
 7 Schedule “A/B,” Debtor has an ownership interest in, *inter alia*, Rutishauser, LLC dba NLV Pain
 8 Management & Urgent Care (“NLV Pain Management”). According to his Schedules “D” and
 9 “E/F,” Debtor has numerous secured and unsecured creditors, both personally and arising out of
 10 his business operations. On Schedule “E/F,” Debtor lists, among many others, Michael Ladner
 11 (“Mr. Ladner”) with a disputed, unsecured claim of \$250,000, described as a business debt with
 12 a pending lawsuit. According to his SOFA, Debtor was the subject of two lawsuits pending at
 13 the time he filed his Petition: Douglas B. Ross, M.D. vs. Jairo Rodriguez, PAC, Case No. A-15-
 14 728577-B, and Michael Ladner vs. Jairo Rodriguez, M.D., NLV Pain Management & Urgent
 15 Care, Case No. A-18-767642-C (“State Action”). Both lawsuits were filed in the Eighth Judicial
 16 District Court, Clark County, Nevada (“State Court”).²

17 On October 31, 2018, the Trustee filed and served a notice of assets and instructions for
 18 creditors to file proofs of claim no later than January 29, 2019. (ECF No. 83).

19 On November 13, 2018, the deadline for objecting to the Debtor’s discharge, or, to
 20 determine the dischargeability of any debt, expired. No adversary complaint objecting to the
 21 Debtor’s discharge or to determine dischargeability of debt was filed by Mr. Ladner.³

22 On November 14, 2018, an order of discharge was entered. (ECF No. 87).

23
 24 ² The court separately takes judicial notice under FRE 201 of the documents filed in the
 25 State Action. See U. S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); Conde v. Open Door
 26 Mktg., LLC, 223 F. Supp. 3d 949, 970 n.9 (N.D. Cal. 2017); Green v. Williams, 2012 WL
 3962458, at *1 n.1 (D. Nev. Sept. 7, 2012); Bank of Am., N.A. v. CD-04, Inc. (In re Owner
Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

27 ³ Only one creditor, Douglas Ross (“Ross”), filed an adversary complaint to determine
 28 dischargeability of debts under Section 523(a)(2) and Section 523(a)(4), denominated Adversary
 Proceeding No. 18-01123-MKN. (ECF No. 86).

On January 15, 2019, Mr. Ladner filed the instant Motion, without the assistance of legal counsel, seeking relief from stay so that he can proceed before the Nevada Supreme Court with respect to his appeal from rulings entered in the State Action. (ECF No. 103). In his Motion, Mr. Ladner states that he “believes that entitlement to compensation in regards to subject case of His relies on the Provider of Health Care Insurance of the Defendants.” Attached to the Motion is a copy of a “Notice of Bankruptcy Filing” filed by the Debtor in Case No. 77218, entitled Michael Ladner v. Jairo Rodriguez, PA-C, NLV Pain Management & Urgent Case, etc., in the Nevada Supreme Court. The Motion does not identify the statutory basis under which relief from stay is sought, but it appears that Mr. Ladner seeks relief from stay based on “cause” under Section 362(d)(1).⁴

On January 31, 2019, Debtor filed an opposition to the Motion. (ECF No. 107). Attached to the Debtor’s opposition are copies of dismissal orders entered in connection with the State Action.

On February 25, 2019, Mr. Ladner filed a notice scheduling the Motion to be heard on March 27, 2019. (ECF No. 111).

DISCUSSION

Mr. Ladner did not file a proof of claim in this case by the January 29, 2019, deadline. As a result, he will receive no distribution from the Debtor’s bankruptcy case if there are any funds available to pay creditors.

Mr. Ladner also did not file an adversary complaint objecting to the Debtor’s discharge or to determine dischargeability of debt by the November 13, 2018 deadline. As a result, any personal liability that the Debtor owed to Mr. Ladner has been discharged under Section 727(b). As a further result, any judgment that Mr. Ladner obtains against the Debtor is void under

⁴ Section 362(d) specifies four grounds on which relief from the automatic stay may be granted. Section 362(d)(2) applies to relief against property of the estate, e.g., land, a building, or a vehicle, which does not apply to this case. Section 362(d)(3) applies to bankruptcy cases involving “single asset” real estate, which does not apply in this case. Section 362(d)(4) applies to relief against real property that has been involved in multiple bankruptcy cases, which also does not apply to the instant case. The only remaining basis is Section 362(d)(1), which permits relief from stay upon a demonstration of “cause.”

1 Section 524(a)(1), and Mr. Ladner is statutorily enjoined under Section 524(a)(2) from pursuing
2 further collection against the Debtor as a personal liability.

3 Mr. Ladner insists that he needs relief from stay to pursue his appeal before the Nevada
4 Supreme Court. The court takes judicial notice of the record before the State Court. That record
5 reveals that there were two separate case numbers assigned to Mr. Ladner's efforts in the State
6 Court with respect to the Debtor and NLV Pain Management. Case No. A-18-767642-C, opened
7 in the State Court on February 26, 2018, involved a motion by Jairo Rodriguez, PA-C, to quash
8 service and to dismiss Mr. Ladner's complaint for medical negligence. Attached to that motion
9 to quash is a copy of a document entitled "Medical Negligence Complaint" that appears to be
10 signed by Mr. Ladner. Included in that complaint is a request "for a settlement from defendant
11 in the amount of \$250,000.00...for pain and suffering." The record indicates that on April 25,
12 2018, an order was entered granting NLV Pain Management's motion and the complaint was
13 dismissed.

14 The State Court record also indicates that after service of the prior complaint was
15 quashed, Mr. Ladner commenced a separate action on June 22, 2018, against Jairo Rodriguez,
16 PA-C and NLV Pain Management, assigned Case No. A-18-776552-C. Mr. Ladner's complaint
17 is entitled "Complaint for Breach of Fiduciary Duty, Intentional Infliction of Emotional Distress
18 and Declaratory Relief." The title of the second complaint does not include the term "medical
19 negligence" and the body of the complaint appears to allege that the Debtor and NLV Pain
20 Management administratively mishandled his Medicare insurance claim that was required for
21 Mr. Ladner to receive medical services. Because of this alleged misconduct, Mr. Ladner asserts
22 that under two separate legal theories (breach of fiduciary duty and intentional infliction of
23 emotional distress), he is entitled to recover damages from the Debtor and NLV Pain
24 Management. The record further indicates that on September 18, 2018, an order was entered by
25 the State Court construing the second complaint as asserting claims for medical negligence or
26 professional malpractice, and dismissing the complaint based on Mr. Ladner's failure to submit
27 an expert affidavit required under Nevada law to pursue a medical negligence claim.

1 After the second complaint was dismissed, Mr. Ladner apparently filed a Notice of
2 Appeal to the Nevada Supreme Court on October 19, 2018. Thereafter, a notice was filed in the
3 Nevada Supreme Court that the Debtor had filed his bankruptcy petition, thereby staying further
4 proceedings. On December 10, 2018, the Nevada Supreme Court entered an order dismissing
5 the appeal as to the Debtor, without prejudice. Thereafter, a notice was filed that NLV Pain
6 Management had filed its bankruptcy petition, thereby staying proceedings as to NLV Pain
7 Management. On January 15, 2019, the Nevada Supreme Court entered a judgment dismissing
8 the appeal as to NLV Pain Management without prejudice, pending relief from the automatic
9 stay in the NLV Pain Management case.

10 When the Debtor filed his Chapter 7 case on August 6, 2018, the automatic stay under
11 Section 362 barred Mr. Ladner from continuing any action to collect a debt as a personal liability
12 of the Debtor. See 11 U.S.C. § 362(a)(1). Whether a debt is based on a theory of medical
13 negligence, administrative mishandling of a Medicare insurance claim, or some other theory,⁵ the
14 creditor is permanently enjoined from any further acts to collect the debt once the debtor receives
15 his bankruptcy discharge. There are exceptions for certain categories of debt under Section
16 523(a), but none of them are applicable in this case. A creditor also can prevent that result either
17 by objecting to the individual debtor's entire discharge under Section 727(a), or, by raising an
18 objection under Section 523(c) as to certain types of debt described in Section 523(a)(2, 4, and
19 6).⁶ In this instance, Mr. Ladner did not object to the Debtor's discharge and he did not object to
20

21 ⁵ At the hearing, Mr. Ladner insisted that his claim is based under the health care
22 insurance of the defendants named in the State Action, as set forth in the Motion. The court is
23 not certain whether Mr. Ladner also is asserting that he has a right to assert a claim for his
24 Medicare insurance, or, if he believes he has a right to directly sue any liability insurance
25 provider for the defendants named in the State Action. Assuming that Mr. Ladner has a right to
26 assert any such claim, that right is relevant only to whether Mr. Ladner had a claim against the
27 Debtor on the date the bankruptcy case was commenced. Assuming further that Mr. Ladner had
28 a viable claim against the Debtor, that claim was still subject to discharge by the Debtor's
bankruptcy.

⁶ As previously mentioned at note 3, supra, only creditor Ross (who is the Debtor's
former business partner), filed a timely objection to the dischargeability of certain loans made
before the bankruptcy cases were filed by the Debtor and NLV Pain Management.

1 the dischargeability of his particular debt. Debtor received his discharge on November 14, 2018.
 2 As a result, Mr. Ladner is barred under federal bankruptcy law from pursuing his claims against
 3 the Debtor regardless of the outcome of any appeal before the Nevada Supreme Court.

4 As to NLV Pain Management, however, the Chapter 7 bankruptcy case that it
 5 commenced on December 18, 2018, will not result in a discharge of any of its debts, including
 6 any amounts that may be owed to Mr. Ladner. Under Section 727(a)(1), a Chapter 7 discharge is
 7 not available if “the debtor is not an individual.” Clearly, NLV Pain Management is not an
 8 individual. So unlike the situation with the Debtor, any claim that Mr. Ladner has against NLV
 9 Pain Management will not be discharged and the outcome of any appeal before the Nevada
 10 Supreme Court is not moot. If Mr. Ladner wishes to pursue relief from stay as to NLV Pain
 11 Management, that relief must be sought in the NLV Pain Management bankruptcy proceeding.⁷

12 For this reason, the court concludes that cause does not exist under Section 362(d)(1) to
 13 grant relief from stay to allow Mr. Ladner to pursue his appeal before the Nevada Supreme Court
 14 with respect to the Debtor. Whether cause exists to do so with respect to NLV Pain
 15 Management, however, must be raised separately in the NLV Pain Management Chapter 7
 16 proceeding.

17 **IT IS THEREFORE ORDERED** that the Motion to Lift the Pertinent Automatic Stay,
 18 brought by Michael Ladner, Docket No. 103, be, and the same hereby is, **DENIED**.

19 Copies sent via CM/ECF ELECTRONIC FILING

20 Copies sent via BNC to:
 21 JAIRO ALEJANDRO RODRIGUEZ
 22 1182 TWINKLING MEADOWS DRIVE
 23 HENDERSON, NV 89012

24 MICHAEL LADNER
 25 424 STEED CIRCLE
 26 N. LAS VEGAS, NV 89030

27 ⁷ The NLV Pain Management bankruptcy case is assigned to Bankruptcy Judge Bruce
 28 Beesley and Mr. Ladner will have to file a motion for relief from stay and schedule a hearing
 before Judge Beesley. It also appears that the Chapter 7 trustee in the NLV Pain Management
 case has set a bar date of June 6, 2019, for creditors to file proofs of claim.