



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
May 10, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 19-12981-MKN
)	Chapter 13
JOANNE W. ENG,)	
)	
Debtor.)	Date: March 9, 2022
)	Time: 2:30 p.m.
)	

ORDER ON MOTION TO DETERMINE CONTEMPT OF COURT PURSUANT TO 11 U.S.C. SECTIONS 105 AND 362 AND REQUEST FOR PUNITIVE DAMAGES, ATTORNEY’S FEES AND SANCTIONS¹

On March 9, 2022, the court heard the Motion to Determine Contempt of Court Pursuant to 11 U.S.C. Sections 105 and 362 and Request for Punitive Damages, Attorney’s Fees and Sanctions (“Contempt Motion”), brought in the above-captioned case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On May 11, 2019, a “skeleton” voluntary Chapter 13 petition was filed by Joanne W. Eng (“Debtor”). (ECF No. 1). The bankruptcy petition was filed on the Debtor’s behalf by the Law Office of Erik Severino. A Notice of Chapter 13 Bankruptcy Case (“Bankruptcy Notice”) was

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the above-captioned Chapter 13 proceeding as they appear on the docket maintained by the clerk of the court. All references to “AECF No.” are to the number assigned to the documents filed in Adversary Proceeding No. 21-01126-mkn. All references to “Section” or “§§ 101-1532” are to the provisions of the Bankruptcy Code. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

1 issued scheduling a meeting of creditors as required by Section 341 (“341 Meeting”) for June 25,
2 2019. (ECF No. 6). The 341 Meeting was concluded on August 8, 2019. The deadline for
3 creditors to file a proof of claim in this bankruptcy case was July 22, 2019, and November 7,
4 2019, for governmental units. The Bankruptcy Notice also set a deadline of August 26, 2019, for
5 creditors to object to discharge and to dischargeability of debts (“Dischargeability Deadline”).
6 The case was assigned for administration to Chapter 13 panel trustee Kathleen A. Leavitt
7 (“Trustee Leavitt”).

8 On June 18, 2019, Debtor filed an amended voluntary petition, her schedules of assets
9 and liabilities (“Schedules”) along with her statement of financial affairs (“SOFA”), and an
10 initial Chapter 13 plan (“Plan #1”). (ECF No. 14). Debtor’s Schedule “E/F” listed Legal
11 Recovery, LLC (“Legal Recovery”), as creditor holding a nonpriority unsecured claim in an
12 unknown amount, based on “Pending Case No.: CGC 15-548357.” Item 9 of the SOFA requires
13 the Debtor to list all lawsuits and court actions to which the Debtor was a party within one year
14 before the filing of her bankruptcy petition, but no pending case is disclosed.

15 On July 3, 2019, Trustee Leavitt filed Trustee’s Opposition to Confirmation of Debtor’s
16 Plan #1 Combined With Trustee’s Recommendation for Dismissal. (ECF No. 22).

17 On July 3, 2019, Debtor filed an amended SOFA. (ECF No. 23). Item 9 of the amended
18 SOFA lists a pending action as Legal Recovery, LLC v. Martin Lee Eng, et al., denominated
19 CGC 15-548357 pending in the Superior Court of California, County of San Francisco
20 (“California Action”).

21 On July 25, 2019, Trustee Leavitt filed a further Trustee’s Opposition to Confirmation of
22 Debtor’s Plan #1 Combined With Trustee’s Recommendation for Dismissal. (ECF No. 25).

23 On August 8, 2019, Trustee Leavitt filed an amended Trustee’s Opposition to
24 Confirmation of Debtor’s Plan #1 Combined With Trustee’s Recommendation for Dismissal.
25 (ECF No. 28).

26 On August 20, 2019, Legal Recovery filed a notice of joinder to Trustee Leavitt’s
27 amended opposition to confirmation of Debtor’s Plan #1. (ECF No. 29).

1 On August 26, 2019, the Dischargeability Deadline expired with no objections having
2 been filed.²

3 On August 28, 2019, Debtor filed another amended SOFA as well as amended Schedule
4 “A/B.” (ECF Nos. 30 and 31). Debtor’s amended Schedule “A/B” listed, *inter alia*, 6 separate
5 checking, savings and brokerage accounts, 3 separate business-related properties described as
6 Lombard Flatts, LLC, Kearny Washington LLC, and Hong Kong, China Group LLC, and 3
7 separate individual retirement accounts.

8 On November 8, 2019, Legal Recovery filed its motion for relief from the automatic stay
9 to continue the California Action (“RAS Motion”). (ECF No. 36). In its RAS Motion, Legal
10 Recovery represented that “Debtor’s insurance carrier has an opportunity to settle this matter
11 within the applicable liability limits of the Debtor’s automobile policy. Thus, Legal Recovery,
12 LLC’s right and ability to recover through the Debtor’s insurance policy constitutes cause under
13 11 U.S.C. § 362(d)(1).” RAS Motion at 6:12-16.³

14 On November 15, 2019, this court entered an order confirming Debtor’s Chapter 13 Plan
15 #1 (“Confirmation Order”). (ECF No. 39). The confirmed Chapter 13 plan provides for the
16 Debtor to commence monthly payments to the Chapter 13 trustee for sixty months beginning on
17 June 11, 2019, and for 100% of all claims to be paid. Additionally, the confirmed plan provides
18 for any scheduled property of the bankruptcy estate to vest in the Debtor upon plan
19 confirmation.⁴ No appeal of the Confirmation Order was taken.

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21 ² Upon completion of the payments required by a confirmed Chapter 13 plan, the
22 individual debtor ordinarily receives a discharge pursuant to Section 1328(a) subject to any
timely objections brought under FRBP 4007(c).

23 ³ At the hearing on the RAS Motion, counsel for Legal Recovery was specifically asked
24 and specifically acknowledged that relief from stay was limited to pursuit on the applicable
25 insurance policy.

26 ⁴ Under Section 1327, one of the effects of confirming a Chapter 13 plan is to vest the
27 scheduled property of the estate in the Chapter 13 debtor, unless the plan or court order provides
28 otherwise. 11 U.S.C. § 1327(b). The more important effect of confirming a Chapter 13 plan is
that it binds the debtor and each creditor, “whether or not the claim of such creditor is provided
for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the
plan.” 11 U.S.C. § 1327(a). Having received notice of commencement of the Chapter 13

1 On December 3, 2019, a Chapter 13 Trustee’s Notice to Debtor(s) and Creditors of Filed
2 Claims, Classification, and Proposed Distribution was filed. (ECF No. 40).⁵

3 On December 11, 2019, the RAS Motion was heard and orally granted for lack of
4 opposition. The relief was limited to allowing Legal Recovery to pursue any insurance coverage
5 that may be applicable to its claim against the Debtor. Counsel for Legal Recovery was directed
6 to prepare and submit a proposed order consistent with the court’s oral ruling.

7 On January 10, 2020, the order on the RAS Motion submitted by counsel for Legal
8 Recovery was entered (“RAS Order”).⁶ (ECF No. 45).

9 On September 1, 2021, Debtor filed a notice removing the California Action to the
10 bankruptcy court, and the removed action was assigned Adversary Proceeding No. 21-01126-
11 mkn. (ECF No. 46 and AECF No. 1). Attached to the removal notice is a copy of a second
12 amended complaint filed in the California Action that names the Debtor as well as multiple
13 individual and non-individual defendants.

14 On September 9, 2021, Debtor’s counsel filed a motion to withdraw as counsel for the
15 Debtor in the Chapter 13 proceeding. (ECF No. 47). The motion was noticed to be heard on
16 October 13, 2021. (ECF No. 48).

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19 proceeding, Legal Recovery appeared in the case, retained bankruptcy counsel, and did not file a
20 proof of claim, did not object to discharge, and did not object to plan confirmation. Legal
21 Recovery is bound by the confirmed Chapter 13 plan and will be subject to a Chapter 13
22 discharge.

22 ⁵ According to the claims register maintained by the clerk, only two nonpriority
23 unsecured claims have been timely filed totaling \$4,316.83. It is not clear whether the Debtor
24 already has made sufficient payments under her confirmed Chapter 13 plan to satisfy 100% of
25 the filed claims. Absent any applicable exception, it appears that the prepetition claim of Legal
26 Recovery would be subject to a Chapter 13 discharge.

26 ⁶ The order confirming the Chapter 13 plan was entered on November 15, 2019. The
27 RAS Order submitted by counsel for Legal Recovery was not consistent with the court’s oral
28 ruling on December 11, 2019. Instead, the order states that the RAS Motion “is granted to the
extent it was not inconsistent with the Chapter 13 Plan.” In other words, nothing in the
inaccurate RAS Order submitted by its counsel allowed Legal Recovery to take acts in violation
of the Chapter 13 plan.

1 On September 9, 2021. Legal Recovery filed a motion to remand the California Action
2 back to the San Francisco County Superior Court (“Remand Motion”). (AECF No. 5).⁷

3 On September 23, 2021, an order was entered approving an ex parte stipulation for
4 attorney William C. Devine, Esq., to substitute as Debtor’s counsel instead of and in place of
5 Erik C. Severino as attorney for Debtor. (ECF No. 51).

6 On October 1, 2021, former counsel’s prior motion to withdraw was withdrawn. (ECF
7 No. 52).

8 On December 3, 2021, Debtor filed opposition to the Remand Motion. (AECF No. 25).

9 On December 9, 2021, Legal Recovery filed a reply in support of the Remand Motion.
10 (AECF No. 29).

11 On December 10, 2021, Debtor filed the instant Contempt Motion seeking to hold Legal
12 Recovery in civil contempt for a variety of reasons, and to obtain a variety of sanctions,
13 including compensatory damages, punitive damages, and attorney’s fees.⁸ The Contempt Motion
14 was noticed to be heard on January 12, 2022, but was supplemented⁹ and renoticed to be heard
15 on January 26, 2022. (ECF Nos. 54, 55, 56, and 57).

16 On January 14, 2022, Legal Recovery filed a corrected opposition (“Opposition”) to the
17 Contempt Motion. (ECF No. 62).

18 On January 25, 2022, the court entered an order denying the Remand Motion because it
19 relied on the RAS Order that was improvidently entered. (AECF No. 37). The same order
20 denying the Remand Motion also vacated the RAS Order and directed counsel for Legal
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22
23 ⁷ The document is entitled “Creditor’s Opposition to Debtor’s Joanne Eng’s Notice of
24 Removal (pursuant to 28 U.S.C. §§ 1334(e), 1141)d 1452(a); Fed. R. Bankr. Pro. 9027” but
25 seeks to remand the California Action or to dismiss the Chapter 13 proceeding.

26 ⁸ Attached as Exhibit “1” to the Contempt Motion is a proposed Statement of Decision
27 that Legal Recovery apparently submitted to the trial court in the California Action.

28 ⁹ Attached as Exhibit “2” to the supplement is a copy of the trial court Register of
Actions in the California Action indicating continued proceedings through December 10, 2021.

1 Recovery to submit an order accurately reflecting the court's oral ruling made at the hearing on
2 December 11, 2019. (AECF No. 37).

3 On January 26, 2022, the court continued the Contempt Motion to February 23, 2022, for
4 status. (ECF No. 63).

5 On February 10, 2022, counsel for Legal Recovery having again failed to submit a
6 proposed order accurately reflecting the court's oral ruling on the RAS Motion, the court entered
7 an amended order: (1) vacating the prior RAS Order, and (2) granting relief from stay effective
8 January 10, 2020, solely with respect to any insurance coverage applicable to the claims against
9 the Debtor in the California Action. (ECF No. 64).

10 On February 16, 2022, a supplement to the Opposition was filed by Legal Recovery
11 ("Supplemental Opposition") in regard to the Contempt Motion.¹⁰ (ECF No. 67).

12 On March 2, 2022, Debtor filed a reply in support of the instant Contempt Motion. (ECF
13 No. 69).

14 DISCUSSION

15 The instant Contempt Motion alleges that Legal Recovery violated the automatic stay
16 under Section 362(a)(5) and 362(a)(6) by continuing prosecution of the California Action. As a
17 result of the alleged violation, Debtor seeks recovery of statutory sanctions under Section 362(k),
18 civil contempt sanctions under Section 105(a), or sanctions under the court's inherent authority.
19 Amongst the various forms of sanctions, Debtor seeks actual damages including emotional

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21 ¹⁰ With its Supplemental Opposition, Legal Recovery provides a copy of a Statement of
22 Decision and Judgment entered in the California Action on October 7, 2021. Legal Recovery
23 argues that the claims it asserted against the Debtor and others in the California Action that it
24 commenced in 2015 somehow were not claims that preceded the Debtor's commencement of the
25 instant Chapter 13 in 2019. On that basis, it maintains that its actions do not seek to recover a
26 prepetition claim in violation of the automatic stay. Under Section 101(5)(A), however, a claim
27 constituting a debt dischargeable in bankruptcy encompasses any "right to payment, whether or
28 not such right is...liquidated, unliquidated, ...matured, unmatured, disputed, undisputed..."
Whether the Debtor engaged in actionable misconduct after the commencement of her Chapter
13 proceeding is immaterial to whether an unmatured claim existed on the petition date. Under
Section 101(12), a debt to Legal Recovery existed on the petition date and is subject to
discharge. Because Legal Recovery failed to commence a proceeding to determine
dischargeability of its claims against the Debtor, entry of a Chapter 13 discharge would enjoin
any post-discharge efforts to collect such claims as a personal liability of the Debtor.

1 distress, punitive damages according to proof, and recovery of attorney’s fees and costs.

2 Because Debtor seeks sanctions under several legal bases, different standards will apply.

3 For statutory sanctions under Section 362(k), Debtor must demonstrate under a
4 preponderance of the evidence standard that Legal Recovery willfully violated the automatic
5 stay. Knowledge of the automatic stay and intentional acts that violate the stay must be proven.

6 See Havelock v. Taxel (In re Pace), 67 F.3d 187, 191 (9th Cir. 1995); see also Koeberer v.
7 California Bank of Commerce (In re Koeberer), 632 B.R. 680, 687 (B.A.P. 9th Cir. 2021). If
8 proven, Section 362(k) expressly authorizes an injured individual to recover actual damages,
9 including costs and attorney’s fees. Actual damages under Section 362(k) may include
10 emotional distress. See Dawson v. Washington Mu. Bank, F.A. (In re Dawson), 390 F.3d 1139,
11 1146-48 (9th Cir. 2004). Additionally, Section 362(k) provides that punitive damages may be
12 awarded in appropriate circumstances. See, e.g., Sundquist v. Bank of America, N.A. (In re
13 Sundquist), 566 B.R. 563, (Bankr. E.D. Cal. 2017) (lender’s egregious violation of the automatic
14 stay warranted \$45 million punitive damages in addition to \$1,074,581.50 in actual damages).

15 For civil contempt sanctions under Section 105(a), Debtor must demonstrate under a
16 clear and convincing evidence standard that the creditor acted without an objectively reasonable
17 basis warranting a finding of civil contempt. See, e.g., Suh v. Anderson (In re Moo Jeong), 2020
18 WL 1277575, at *4 (B.A.P. 9th Cir. Mar. 16, 2020) (“To hold a party in contempt, the movant
19 must show by clear and convincing evidence that the party violated a specific and definite courts
20 order....The automatic stay qualifies as a specific and definite court order.”). Compensatory
21 damages for civil contempt under Section 105(a) are available, including emotional distress
22 damages. See Walls v. Wells Fargo Bank, N.A., 276 F.3d 502, 507 (9th Cir. 2002). Unlike
23 punitive damages specifically authorized under Section 362(k), a bankruptcy court may only
24 award relatively mild, noncompensatory fines under Section 105(a). See Knupfer v. Lindblade
25 (In re Dyer), 322 F.3d 1178, 1196 (9th Cir. 2003).

26 For civil contempt sanctions imposed under the court’s inherent power, there must be a
27 finding of “either bad faith, conduct tantamount to bad faith, or recklessness ‘with an additional
28 factor such a frivolousness, harassment, or an improper purpose.’” Fink v. Gomez, 239 F.3d

1 989, 994 (9th Cir. 2001); see also Mahaffey v. Milner (In re Crystal Cathedral Ministries), 2021
2 WL 2182975, at *7-8 (B.A.P. 9th Cir. May 28, 2021). The finding must be supported by clear
3 and convincing evidence. See In re Nelson Ricks Cheese Co., Inc., 2021 WL 1731765, at *3
4 (Bankr. D. Idaho Apr. 30, 2021) (“Although the specific burden of proof is unsettled in the Ninth
5 Circuit, the general view is that bad faith or willful misconduct must be proven by clear and
6 convincing evidence.”). Sanctions for such bad faith or improper conduct may include an award
7 of attorney’s fees and costs incurred as a result of the misconduct. See Chambers v. NASCO,
8 Inc., 501 U.S. 32, 45-46 (1991).

9 In response, Legal Recovery raises a number of arguments, some of which appear to
10 reflect an ignorance of basic bankruptcy law.¹¹ Material factual disputes exist, many of which
11 may require testimony of the parties, principals of the parties, and perhaps the attorneys
12 involved. Having considered the arguments and record presented, the court concludes that the
13 Contempt Motion sufficiently alleges conduct by Legal Recovery requiring an evidentiary
14 hearing as a contested matter under FRBP 9014. A scheduling conference will be held to
15 address the conduct of any discovery, the anticipated length of any evidentiary hearing, and the
16 desire, if any, for a settlement conference..

17 **IT IS THEREFORE ORDERED** that a scheduling conference on the Motion to
18 Determine Contempt of Court Pursuant to 11 U.S.C. Sections 105 and 362 and Request for
19 Punitive Damages, Attorney’s Fees and Sanctions brought by Joanne W. Eng, Docket No. 54,

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21 ¹¹ The most startling example may be Legal Recovery’s following assertion:

22 A creditor may choose not to participate in a plan after evaluating all of a
23 Chapter 13 debtor’s debts and the proposed repayment plan. Perry v. Certificate
24 Holder of Thrift Sav., 320 F.2d 584, 589 (9th Cir. 1963). 11 U.S.C. § 1327(c)
25 provides that the property that vests in the Debtor is “free and clear of any claim
26 or interest of any creditor provided for by the plan.” Here, Plaintiff did not
27 participate in the plan and hence is not bound by it other than the fact that plaintiff
28 will not participate in distributions from the bankruptcy estate.

26 Opposition at 9:6-13 (emphasis added). Inasmuch as Legal Recovery apparently is aware of
27 Section 1327, it is baffling that it could reach the conclusion that it is not bound by the confirmed
28 plan when Section 1327(a) expressly provides otherwise. See note 4, supra. Moreover, the
Ninth Circuit opinion that Legal Recovery cites was decided fifteen years before the Bankruptcy
Code was enacted, i.e., Section 1327 did not even exist at the time the case was decided.

1 will be held on **June 9, 2022, at 10:00 a.m.** At the conference, counsel for the parties must be
2 prepared to discuss the scheduling of an evidentiary hearing in this matter, including discovery
3 deadlines, briefing schedules, and any interest in a judicial settlement conference.

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6 Copies sent via CM/ECF ELECTRONIC FILING

7 Copies sent via BNC to:
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