


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
October 28, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 21-15726-MKN
) Chapter 7
DEBRA LYNN SIVAS)
aka DEBBIE LYNN SIVAS,)
) Date: September 28, 2022
Debtor.) Time: 2:30 p.m.
)

ORDER ON MOTION FOR DETERMINATION OF WHETHER LLOYDWINTER, P.C. WILLFULLY VIOLATED THE DISCHARGE INJUNCTION AND REQUEST FOR SANCTIONS¹

On September 28, 2022, the court heard the Motion for Determination of Whether LloydWinter, P.C. (“LloydWinter”) Willfully Violated the Discharge Injunction and Request for Sanctions (“Sanctions 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.

BACKGROUND²

¹ 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 provisions of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq. All references to “FRE” are to the Federal Rules of Evidence.

² Pursuant to FRE 201(b), the court takes judicial notice of documents filed in this bankruptcy proceeding or otherwise maintained in the public records. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). See also Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of court filings in a state court case where the same plaintiff asserted similar claims); In re Blas, 614 B.R. 334, 339 n.27 (Bankr. D. Alaska 2019)(“This court may take judicial notice of the dockets of other courts.”).

1 On December 16, 2021, a “skeleton” voluntary Chapter 7 petition was filed by Debra
2 Lynn Sivas (“Debtor”). (ECF No. 1). The bankruptcy petition was filed on the Debtor’s behalf
3 by Chad Golightly, Esq. of Fair Fee Legal Services. A Notice of Chapter 7 Bankruptcy Case
4 (“Bankruptcy Notice”) was issued scheduling a meeting of creditors as required by Section 341
5 (“341 Meeting”) for January 19, 2022. (ECF No. 5). The Bankruptcy Notice also set a deadline
6 of March 21, 2022, for creditors to object to discharge and to dischargeability of debts. The
7 Bankruptcy Notice also informs all parties in interest that a deadline to file proofs of claim has
8 not been set because “No property appears to be available to pay creditors.” The case was
9 assigned for administration to Chapter 7 panel trustee Lenard E. Schwartzter (“Trustee
10 Schwartzter”).

11 On December 19, 2021, a Certificate of Notice (“Notice Certificate”) was filed
12 evidencing that the Bankruptcy Notice was sent by first class mail and by electronic notice to a
13 variety of parties. (ECF No. 8).

14 On December 29, 2021, Debtor filed her schedules of assets and liabilities (“Schedules”)
15 along with her statement of financial affairs (“SOFA”). (ECF No. 12). On her unsecured
16 creditor Schedule “E/F,” Debtor listed 19 creditors, including “Lloyd Winter, 1724 Broadway
17 Stgreet #6, Fresno, California 93721,” with a claim in the amount of \$7,957.00.

18 On January 20, 2022, after the 341 Meeting was concluded the previous day, Trustee
19 Schwartzter reported on the case docket that there are no assets available for distribution to
20 creditors (“No Asset Report”). (ECF No. 18).

21 On February 15, 2022, Debtor filed an amended creditor Schedule “E/F” that still
22 includes “Lloyd Winter.” (ECF No. 29).

23 On March 22, 2022, an Order of Discharge (“Discharge Order”) was entered. (ECF No.
24 34).

25 On March 24, 2022, a separate Certificate of Notice was filed evidencing that the
26 Discharge Order was served by first class mail on the creditors as scheduled in this case,
27 including “Lloyd Winter, 1724 Broadway Stgreet #6, Fresno, California 93721.” (ECF No. 36).

28 On April 22, 2022, a final decree was entered closing the Debtor’s case. (ECF No. 38).

1 On August 9, 2022, Debtor filed a motion to reopen the Chapter 7 proceeding. (ECF No.
2 39).

3 On August 22, 2022, an order was entered granting the Debtor's request to reopen the
4 Chapter 7 proceeding. (ECF No. 40)

5 On August 22, 2022, Debtor filed the instant Sanctions Motion that was noticed to be
6 heard on September 28, 2022. (ECF Nos. 42 and 43). Attached to the Sanctions Motion is a
7 copy of a Declaration of Debra Lynn Sivas ("Sivas Declaration") as well as two exhibits.
8 Exhibit "A" consists of email messages exchanged amongst the law firm of LloydWinter, P.C.
9 and counsel for the Debtor July 27, 2022 and July 29, 2022. Exhibit "B" is a copy of a
10 Statement of Account apparently reflecting services provided by LloydWinter to the Debtor
11 between January 29, 2016 and July 3, 2017, and payments made by the Debtor from August 16,
12 2017 to November 30, 2021.

13 On September 15, 2022, LloydWinter filed an opposition ("Opposition") to the Sanctions
14 Motion. (ECF No. 47). The Opposition consists of 23 paragraphs but is signed under penalty of
15 perjury by "Jody L. Winter, Owner." Attached as Exhibit "1" to the Opposition are copies of a
16 variety of emails amongst LloydWinter and counsel for the Debtor between July 28, 2022 and
17 August 23, 2022. Also attached to the Opposition is the Declaration of Vanessa Rios ("Rios
18 Declaration").

19 On September 21, 2022, Debtor filed a reply ("Reply"). (ECF No. 49).

20 DISCUSSION

21 This is a "no asset" Chapter 7 case. It is well established in this circuit that except for
22 "bad act" debts encompassed by Section 523(c), even unsecured debts otherwise described in
23 Section 523(a)(3) are discharged in no-asset cases because no deadline to file a proof of claim is
24 ever established. See Beezley v. California Land Title Co. (In re Beezley), 994 F.2d 1433, 1440-
25 41 (9th Cir. 1993) and White v. Nielsen (In re Nielsen), 383 F.3d 922, 925 (9th Cir. 2004).³ See

26
27 ³ In Beezley, the concurring opinion by Judge O'Scannlain explaining why unsecured
28 debts are discharged in no-asset, no bar date cases was expressly adopted by the circuit panel in
Nielsen as the law in the Ninth Circuit. "We publish this opinion primarily to reaffirm
established Ninth Circuit law on the effect of a failure to list a creditor in a no-assets, no-bar-date

1 also Strand v. Clark (In re Clark), 2012 WL 1911926, at *5 (B.A.P. 9th Cir. May 25, 2012) (“As
2 a chapter 7 no-asset case with no bar date, if the prepetition debt...constituted an unsecured debt
3 (not excepted under §523) it was discharged...even if [the debtors] failed to schedule it.”)
4 (emphasis added); In re Lara-Morales, 2019 WL 5884230, at *1 n.2 (Bankr. D. Nev. Apr. 5,
5 2019) (“In the Ninth Circuit, the claims of creditors who are not scheduled by a Chapter 7
6 individual debtor are discharged in no asset cases.”); In re Cuomo, 2013 WL 3155425, at *2 n.2
7 (Bankr. D. Nev. June 20, 2013)(“In Chapter 7 no asset, no bar date cases...debts not incurred
8 through fraud, defalcation, or willful and malicious injury are discharged regardless of whether
9 they are schedule.”) (emphasis added). Compare Grantz v. Fashion Show Mall, LLC (In re
10 Grantz), 584 F.Supp.3d 915, 921 (D. Nev. 2022) (declining to extend Beezley-Nielsen holding to
11 unlisted creditors in asset bankruptcy cases). In this instance, the prebankruptcy debt owed by
12 the Debtor to LloydWinter was discharged even if LloydWinter was never properly served or did
13 not receive notice of the Chapter 7 proceeding. In other words, even if LloydWinter never
14 received notice of the Debtor’s bankruptcy due to an inaccurate mailing address, the obligation
15 was discharged.

16 Section 524(a)(2) provides that an order of discharge results in a statutory injunction that
17 bars pre-petition creditors from any “act, to collect...any debt as a personal liability of the
18 debtor...” 11 U.S.C. §524(a)(2). Creditors who violate the discharge injunction may be held in
19 civil contempt if there is no objectively reasonable basis for concluding that their conduct might
20 be lawful. See Taggart v. Lorenzen, 139 S.Ct. 1795, 1801 (2019). Thus, a creditor may be held

21 _____
22 Chapter 7 bankruptcy. We previously held in *In re Beezley* that such a failure does not justify
23 revocation of the discharge, but most of the reasoning in that decision was set out in a
24 concurrence rather than in the terse per curiam opinion. We follow the holding of that opinion
25 and adopt the reasoning of the concurrence.” 383 F.3d at 925. The Nielsen panel observed that
26 leaving a creditor off a mailing list may amount to failing to list or schedule the debt. Id. at 926.
27 It further stated that “Such a failure to list nevertheless does not make the debt non-dischargeable
28 in a no-asset, no-bar-date Chapter 7 bankruptcy because, in such a bankruptcy, there is no time
limit for ‘timely filing of a proof of claim,’ so none are untimely.” Id. at 926-27. Thus, the
Nielsen panel concluded that “Since ‘the entire thrust of [section 523(a)(3)(A)] is to protect the
creditor’s right to file a proof of claim, and so to participate in any distribution of the assets of
the estate,’ section 523(a)(3)(A) ‘is not implicated [in a no-assets case] because there can never
be a time when it is too late to permit timely filing of a proof of claim.’” Id. at 927.

1 in civil contempt for violating a discharge order “where there is not a ‘fair ground of doubt’ as to
2 whether the creditor’s conduct might be unlawful under the discharge order.” Id. at 1804. The
3 creditor’s subjective intent or good faith belief does not bar a finding of civil contempt, but may
4 be considered in determining the appropriate sanction. Id. at 1802. Civil contempt sanctions are
5 designed to compensate the victim of the misbehavior and possibly to coerce compliance with
6 the prior order, rather than to punish the offender. See Knupfer v. Lindblade (In re Dyer), 322
7 F.3d 1178, 1192 (9th Cir. 2003). When civil contempt is found for a violation of the discharge
8 injunction, appropriate sanctions can include actual damages such as emotional distress or
9 economic losses, in addition to an award of attorney’s fees and costs. Id. at 1193. The
10 requesting party must establish by clear and convincing evidence the grounds for civil contempt
11 and an award of sanctions. See Bateman v. GemCap Lending I, LLC (In re Bateman), 2019 WL
12 3731532, at *6 (B.A.P. 9th Cir. Aug. 7, 2019).

13 There is no dispute that the Discharge Order was entered on March 22, 2022. There is no
14 dispute that LloydWinter received a copy of the Discharge Order on May 25, 2022. See
15 Opposition at ¶ 7. There is no dispute that LloydWinter sent notice to the Debtor on July 7,
16 2022, expressing its position that the debt was still owed. Id. at ¶ 11. There is no dispute that
17 LloydWinter prepared a new Statement of Account after receiving a telephone call on July 20,
18 2022, and transmitted the new Statement to the Debtor. Id. at ¶ 12. There is no dispute that
19 Debtor’s counsel directly contacted LloydWinter no later than July 26, 2022, asserting the debt
20 had been discharged. Id. at ¶ 13. There is no dispute that on July 29, 2022, LloydWinter
21 communicated its intent to continue collection efforts because it believed that the debt had not
22 been discharged. See Exhibit “A” to Sanctions Motion at page 13 of 13. There is no dispute that
23 the new Statement of Account was received by the Debtor on August 3, 2022. See Silva
24 Declaration at ¶ 13. There is no dispute that after the new Statement of Account was received by
25 the Debtor, the Debtor received no further communications from LloydWinter. See Opposition
26 at ¶ 18; Rios Declaration at ¶ 7. Under this timeline, it is clear that any violation of the discharge
27 injunction arising under Section 524(a)(2) would have occurred during the 27-day period
28 between July 7, 2022 and August 3, 2022.

1 From July 29, 2022, and August 23, 2022, the record reflects further communications
2 between the Debtor's counsel and LloydWinter. On August 22, 2022, the Sanctions Motion was
3 filed and noticed for hearing. Debtor's legal position that the debt was discharged in accordance
4 with the Ninth Circuit's decisions in Beezley and Nielsen is expressly set forth in the Sanctions
5 Motion. Id. at ¶ 22. There is no evidence, however, that Debtor's counsel ever informed
6 LloydWinter that its legal position is based on controlling Ninth Circuit authority. None of the
7 email exchanges that took place between July 27, 2022, and August 23, 2022, makes any
8 mention of the legal authority on which the Debtor relies.⁴ Unlike LloydWinter, counsel for the
9 Debtor specializes in bankruptcy law and practices in bankruptcy court on a daily basis. Failure
10 to cite the controlling authority to opposing legal counsel should have prevented any further
11 dispute. Under these circumstances, it is not clear whether it was ever necessary for the instant
12 Sanctions Motion to have been filed.

13 Based on the record, the court finds that there was no objectively reasonable basis for
14 LloydWinter to conclude that sending the new Statement of Account to the Debtor was lawful.
15 There is no fair ground for doubt that in the Ninth Circuit the efforts of LloydWinter might be
16 unlawful. LloydWinter concedes that it does not specialize in bankruptcy matters nor regularly
17 practice in bankruptcy court. See Opposition at ¶ 9. More important, its principal acknowledges
18 that "The Firm has not retained a bankruptcy expert to represent it in this matter." Id. Had
19 LloydWinter done so, any competent bankruptcy practitioner would be aware of the Ninth
20 Circuit decisions in Beezley and Nielsen, or at the very least, would be able to locate those
21 authorities through available research devices. On the other hand, it is inexplicable that Debtor's

22 ⁴ On August 23, 2022, there were several emails exchanged between LloydWinter and
23 Debtor's counsel from 12:29 p.m. to 4:10 p.m. The initial email from LloydWinter at 12:29 p.m.
24 continues to assert that the debt was not discharged and concludes: "Please respond
25 substantively to our communications and provide legal authority for your position that our firms'
26 debt was properly discharged, given that we were not timely or properly provided with notice of
27 the bankruptcy." Opposition at page 19 of 35. The final email from Debtor's counsel to
28 LloydWinter at 4:10 p.m. states, in pertinent part: "What support or theory does Lloyd Winter,
P.C. have to support its contention that the debt was not discharged?" Opposition at page 27 of
35. Remarkably, none of the emails from Debtor's counsel informed LloydWinter that the
subject debt in a no-asset case was discharged as a result of the Ninth Circuit decisions in
Beezley and Nielsen.

1 counsel did not simply refer to those authorities when communicating with LloydWinter before
2 filing the Sanctions Motion. The Krieger Law Group specializes in consumer bankruptcy cases
3 and has experience in addressing discharge violations. As there is no dispute that LloydWinter
4 ceased any further communications with the Debtor after August 3, 2022, however, there was no
5 continuing violation of the discharge injunction that needed to be addressed. In other words, at
6 the time the Sanctions Motion was filed, it was unnecessary to seek civil contempt sanctions to
7 coerce LloydWinter to comply with the Discharge Order.

8 For these reasons, the court concludes that LloydWinter is in civil contempt for violating
9 the Discharge Order. As compensation for her injuries, the court awards \$350.00 to the Debtor
10 for the emotional distress suffered during the 27-day period of the violation, i.e., between July 7,
11 2022 and August 3, 2022. See Sivas Declaration at ¶ 14. As additional sanctions, the court
12 awards attorney's fees equal to three hours of services at the usual hourly billing rate of Debtor's
13 counsel, Shawn Miller.⁵ While additional time may have been expended by Debtor's counsel in
14 preparing and presenting the instant Sanctions Motion, the Debtor has failed to demonstrate by
15 clear and convincing evidence that any additional fees were necessary or reasonable⁶ under the
16 circumstances.

17 **IT IS THEREFORE ORDERED** that the Motion for Determination of Whether
18 LloydWinter, P.C. Willfully Violated the Discharge Injunction and Request for Sanctions,
19 brought in the above-captioned case, Docket No. 42, be, and the same hereby is, **GRANTED**.

20 **IT IS FURTHER ORDERED** that LloydWinter, P.C., shall pay the amount of \$350.00
21 to the above-captioned debtor.

22 ⁵ The court takes judicial notice of the declaration that attorney Miller filed on November
23 22, 2021, in another Chapter 7 proceeding in this judicial district in which attorney's fees were
24 sought for a discharge violation. See In re Josephine Cangemi, Case No. 21-10991-ABL, Docket
25 No. 40. In that declaration, attorney Miller attested that Krieger Law Group, LLC was
26 specifically retained to prosecute the discharge violation motion in that proceeding. In that
27 declaration, attorney Miller also attested that his billing rate is \$495.00 per hour. The court
28 applies the same hourly billing rate in the instant proceeding.

⁶ Compare Koeberer v. California Bank of Commerce (In re Koeberer), 632 B.R. 680,
691-92 (B.A.P. 9th Cir. 2021)(attorney's fees under 11 U.S.C. §362(k) for a violation of the
automatic stay may be denied if determined to be unreasonable under the circumstances).

1 **IT IS FURTHER ORDERED** that LloydWinter, P.C., shall pay attorney's fees to
2 Krieger Law Group, LLC, in the amount of \$1,485.00.

3 **IT IS FURTHER ORDERED** that LloydWinter, P.C., shall pay the foregoing amounts
4 by certified funds to be received **no later than November 23, 2022**, at the law offices of the
5 Krieger Law Group, LLC.

6
7 Copies sent via CM/ECF ELECTRONIC FILING

8 Copies sent via BNC to:
9 DEBRA LYNN SIVAS
10 5055 WEST HACIENDA AVE., #1209
11 LAS VEGAS, NV 89118

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

###