

1 developed an e-mailing list of persons to be invited, and would
2 send out invitations to people on that list. For whatever
3 reason, Mr. Munns was on that list, and around the time he
4 received the Court's order denying his request for a default
5 judgment he also received an e-mail invitation to attend a
6 seminar on July 20, 2006, hosted by debtor.

7 Mr. Munns was angered when he received the invitation. He
8 discussed with his wife the idea of going to the seminar to warn
9 others about his experience in dealing with the debtor.
10 Ultimately, she prepared a flyer to aid in that purpose, and on
11 July 20 he went to the seminar with 25-30 copies of the flyer.
12 He arranged that an acquaintance from his church would meet him
13 there and, according to Mr. Munns and the individual, serve as an
14 extra pair of eyes and/or as a witness. To debtor, the
15 individual appeared to be more of a bodyguard for Mr. Munns.

16 At the meeting, Mr. Munns did pass out several flyers, which
17 quickly drew debtor's attention, and a confrontation resulted.
18 The Court credits the account of Sharon Fitch, who was there to
19 speak on estate planning. She testified Mr. Munns was agitated
20 and, in addition to handing out the flyers, also made verbal
21 complaints about debtor that grew louder. All witnesses agreed
22 that hotel security was summoned, and Mr. Munns and his companion
23 were escorted out. There was no physical altercation, but more a
24 shouting match.

25 Debtor contends that as a result of the incident, that
26 night's program was delayed, and the attendance was well below

1 normal. He claimed the company lost money on the program, and
2 cancelled the next two for fear of Mr. Munns returning, as well
3 as for concern about attendance after the incident. He also
4 seeks reimbursement for the time spent repairing relations with
5 invitees who were there, and for his attorneys fees for enforcing
6 the discharge.

7 The crux of the factual issues is whether Mr. Munns was
8 exercising his First Amendment rights in warning others, or was
9 he attempting to collect on a prepetition debt. See In re
10 Andrus, 189 B.R. 413 (N.D. Ill. 1995); In re Crudup, 287 B.R. 358
11 (Bankr. E.D. N.C. 2002); In re Stonegate Security Services, Ltd.,
12 56 B.R. 1014 (N.D. Ill. 1986). The flyer was addressed to
13 "fellow attendee". It recites Mr. Munns' version of his
14 experience in dealing with debtor. If it had left it at that,
15 the Court would likely conclude the communication was protected
16 by the First Amendment and would not subject him to possible
17 sanctions under all the circumstances. However, it was not left
18 at that. Rather, the last paragraph of the flyer reads:

19 What do I want now? First, to help
20 others avoid experiencing the same situation
21 that I had with Mr. Harnsberger . . .
22 essentially, pay for services that go
23 unrendered and then be out the money you
24 invested to get them taken care of. Finally,
I would like Mr. Harnsberger to simply return
my \$8,000.00. In so doing, he can turn
around a negative experience and make the
situation right. Thank you, beware and good
luck. (Emphasis by bold in original.)

25 The Court is satisfied that the foregoing is an effort to collect
26 on a prepetition debt.

1 The question then is whether such an effort to collect on a
2 prepetition debt violates some provision of the Bankruptcy Code.
3 Debtor contends any debt he owed to Mr. Munns was discharged, and
4 that Mr. Munns therefore violated the discharge injunction of
5 11 U.S.C. § 524. Section 524(a) provides in pertinent part:

6 (a) A discharge in a case under this
7 title -

8 (1) voids any judgment . . . to
9 the extent that such judgment is a
10 determination of the personal liability,
11 of the debtor with respect to any debt
12 discharged under section 727 . . . ;

13 (2) operates as an injunction
14 against the commencement or continuation
15 of an action, the employment of process,
16 or an act, to collect, recover or offset
17 any such debt as a personal liability of
18 the debtor . . .

19 In order to determine whether § 524 is in effect, then, the Court
20 must ascertain whether the debt is one that was discharged under
21 § 727. Section 727(b) provides:

22 (b) Except as provided in section
23 523 of this title, a discharge under
24 subsection (a) of this section
25 discharges the debtor from all debts
26 that arose before the date of the order
for relief under this chapter

Section 523(a), in turn, provides in relevant part:

 (a) A discharge under section 727
. . . of this title does not discharge
an individual debtor from any debt -

. . .

 (3) neither listed nor
scheduled under section 521(1) of
this title, with the name, if known

1 to the debtor, of the creditor to
2 whom such debt is owed . . .

3 Section 523(a)(2)(A) also provides that § 727 does not discharge
4 a debt:

5 (2) for money, property . . .
6 to the extent obtained by -

7 (A) false pretenses, a
8 false representation, or
9 actual fraud . . .

9 As already noted, Mr. Munns filed an adversary proceeding under
10 § 523(a)(2)(A), which has not yet been finally resolved.

11 The sum of the foregoing is that any prepetition debt which
12 debtor may owe to Mr. Munns has not been discharged under § 727
13 because of both the pending § 523(a)(2)(A) adversary and the
14 operation of § 523(a)(3) since debtor never listed Mr. Munns as a
15 coeditor, even a disputed one. Since the debt, if any, was not
16 discharged under § 727, and such a discharge is a predicate to
17 invoking the discharge injunction of § 524, § 524 cannot serve as
18 the basis for a contempt proceeding for purportedly violating it.

19 The next question is whether there is any other provision of
20 the Bankruptcy Code that debtor might assert Mr. Munns has
21 violated. The only one that comes to mind is the automatic stay
22 of 11 U.S.C. § 362 (a)(1), which prohibits:

23 (1) the commencement or continuation
24 . . . of a judicial, administrative, or other
25 act or proceeding against the debtor that was
26 or could have ben commenced before the
commencement of the case under this title, or
to recover a claim against the debtor that

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1 arose before the commencement of the case
2 under this title;

3 So if the debt arose prepetition, as Mr. Munns' claim apparently
4 did, then the automatic stay would normally apply. Section
5 362(k) provides a mechanism for imposing damage awards for
6 willful violations of the stay. However, § 362(c)(2) provides:

7 (2) the stay of any other act under
8 subsection (a) of this section continues
 until the earliest of -

9 (A) the time the case is closed;

10 (B) the time the case is dismissed;

11 or

12 (C) if the case is a case under
13 Chapter 7 of this title concerning an
 individual . . . , the time a discharge
 is granted or denied.

14 In this case, the debtor's discharge was entered on January 19,
15 2005, and the case was closed January 24, 2005. It was reopened
16 February 28, 2005 for unrelated reasons, and was reclosed on
17 December 30, 2005. Consequently, on July 20, 2006 there was no
18 automatic stay in place, and thus no order under § 362 that
19 Mr. Munns might have violated by his conduct on July 20, 2006.

20 As a collateral matter, Mr. Munns' counsel has pointed out
21 that the instant contempt proceeding was brought in the adversary
22 proceeding Mr. Munns filed, rather than in the main bankruptcy
23 case, which is closed. It is correct that there is no order,
24 statutory or otherwise extant in the adversary proceeding which
25 Mr. Munns could be said to have violated.

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1 For all the foregoing reasons, the Court finds and concludes
2 that while Mr. Munns did attempt to collect on a prepetition debt
3 on July 20, 2006 there was no discharge injunction or automatic
4 stay in force and effect at the time which would render him
5 liable for monetary sanctions, and debtor has pointed to no other
6 provision to support the remedy he seeks. Accordingly, this
7 proceeding must be dismissed.

8 The Court hastens to point out that Mr. Munns should not
9 review the ruling in this proceeding as some sort of license to
10 make further efforts to collect on this alleged debt. The venue
11 to do that is the nondischargeability adversary. If Mr. Munns
12 prevails in that proceeding, rendering the debt nondischargeable,
13 then he will be free to pursue his claim. If the debt is
14 determined to be dischargeable, then it is deemed discharged
15 under the rationale of In re Beezley, 994 F.2d 1433 (9th Cir.
16 1992). At that point in time the discharge injunction of § 524
17 would apply, and violations would be sanctionable by contempt.

18 IT IS SO ORDERED.

19 DATED: FEB - 9 2007

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21 
22 PETER W. BOWIE, Chief Judge
United States Bankruptcy Court

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