

1 WRITTEN DECISION - NOT FOR PUBLICATION

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SOUTHERN DISTRICT OF CALIFORNIA  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re: ) Adversary Case No. 05-90348-H11  
)  
JOSEPH VINCENT CARACCILOLO, )  
)  
Debtor. ) MEMORANDUM DECISION  
)  
Bk. Case No. 93-05609-H11 )  
)  
\_\_\_\_\_  
JACK WIREMAN and RONALD )  
THOMPSON, )  
)  
Plaintiffs, )  
)  
vs. )  
)  
JOSEPH VINCENT CARACCILOLO, )  
)  
Defendant. )  
)  
\_\_\_\_\_  
JOSEPH VINCENT CARACCILOLO, )  
)  
Counter-Claimant, )  
)  
v. )  
)  
JACK WIREMAN and RONALD )  
THOMPSON, )  
)  
Counter-Defendants. )  
\_\_\_\_\_ )

27 Jack Wireman and Ronald Thompson (collectively, "WT" or  
28 "Plaintiffs") and Joseph Vincent Caracciolo ("Debtor" or

1 "Defendant") filed cross-motions for summary judgment.

2 At issue is whether Plaintiffs are bound by Debtor's  
3 confirmation order even though they received no notice of Debtor's  
4 bankruptcy filing or the confirmation hearing.

5 The matter came before the Court on March 27, 2007. Debtor's  
6 attorney argued that once Plaintiffs became aware of the  
7 confirmation order in 1996, Plaintiffs were obligated to comply  
8 with the order, which expressly discharged their claim, until they  
9 obtained relief from this Court. Debtor's attorney urged this  
10 Court to review the cases cited in Debtor's opposition brief,  
11 footnote six, which allegedly supports this argument. The Court  
12 therefore took the issue of whether Plaintiffs had the obligation  
13 to seek relief from this Court, prior to proceeding with their  
14 malicious prosecution lawsuit in state court, under submission.

15 This Court has jurisdiction to determine this matter  
16 pursuant to 28 U.S.C. §§ 1334 and 157(b)(1) and General Order No.  
17 312-D of the United States District Court for the Southern District  
18 of California. This is a core proceeding pursuant to 28 U.S.C.  
19 § 157(b)(2)(A) and (I).

20 I.

21 FINDINGS OF FACT

22 Plaintiffs filed this adversary proceeding against Debtor on  
23 August 11, 2005, alleging a claim for relief under § 523(a)(3)(B).  
24 Debtor answered and asserted four counterclaims against Plaintiffs,  
25 two of which are relevant here. In his first counterclaim for  
26 relief, Debtor seeks declaratory judgment that the malicious  
27 prosecution judgment obtained by Plaintiffs is void in violation of  
28 the discharge, and in his second counterclaim for relief, Debtor

1 seeks damages for Plaintiffs' violation of the discharge  
2 injunction.

3 This Court has previously found that Plaintiffs did not have  
4 either actual or constructive knowledge of Debtor's bankruptcy  
5 filing. [See Memorandum Decision dated December 13, 2006, docket  
6 #95].<sup>1</sup>

7 II.

8 CONCLUSIONS OF LAW

9 A. STANDARDS FOR SUMMARY JUDGMENT

10 Rule 56(c) of the Federal Rules of Civil Procedure, made  
11 applicable to adversary proceedings by Fed. R. Bankr. P. 7056,  
12 provides that summary judgment:

13 [S]hall be rendered forthwith if the pleadings,  
14 depositions, answers to interrogatories, and  
15 admissions on file, together with the  
16 affidavits, if any, show that there is no  
genuine issue as to any material fact and that  
the moving party is entitled to a judgment as a  
matter of law.

17 "The moving party bears the initial responsibility of informing the  
18 district court of the basis for its motion, and identifying those  
19 portions of 'the pleadings, depositions, answers to  
20 interrogatories, and admissions on file, together with the  
21 affidavits, if any,' which it believes demonstrate the absence of a  
22 genuine issue of material fact." Hughes v. United States, 953 F.2d

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24  
25 <sup>1</sup> On or about April 1996, WT filed a lawsuit in the San Diego Superior Court  
26 against various parties, including but not limited to the Debtor seeking damages  
27 for malicious prosecution. On August 18, 1997, judgment was entered in favor of  
28 WT in the amount of \$1,045,303.31 with an offset for the prior settlements in the  
amount of \$825,000 leaving the total amount awarded against several parties,  
including Debtor, at \$266,270.35. This Court incorporates its previous Findings  
of Fact as set forth in its Memorandum Decision dated December 13, 2006 (docket  
#95), with the exception of the fact set forth in the parties stipulation (docket  
#105).

1 531, 541 (9th Cir. 1992) citing Celotex Corp. v. Catrett, 477 U.S.  
2 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). "After the  
3 moving party has met its initial burden, Rule 56(e) . . . requires  
4 the nonmoving party to go beyond the pleadings and by her own  
5 affidavits, or by the 'depositions, answers to interrogatories, and  
6 admissions on file,' designate 'specific facts showing that there  
7 is a genuine issue for trial.'" Hughes, 953 F.2d at 541 (citation  
8 omitted). If the record as a whole could not lead a rational trier  
9 of fact to find for the non-moving party, then there is no genuine  
10 issue of fact precluding summary judgment. Matsushita Elec. Indus.  
11 Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S.Ct.  
12 1348 (1986).

13 **B. PLAINTIFFS WERE NOT "OBLIGATED" TO SEEK RELIEF FROM THIS COURT**  
14 **PRIOR TO PROCEEDING WITH THEIR STATE COURT LAWSUIT**

15 It is undisputed that Plaintiffs did not receive any notice  
16 regarding Debtor's bankruptcy until June 1996, and some eighteen  
17 months after his plan confirmation order was entered in January  
18 1995. Therefore, the express terms of the confirmation order<sup>2</sup> did  
19 not discharge and enjoin the Plaintiffs' claim because they did not  
20 have adequate notice. Reliable Elec. Co., Inc. v. Olson Constr.  
21 Co., 726 F.2d 620, 622-23 (10th Cir. 1984) (due process requires  
22 "notice reasonably calculated, under all the circumstances, to  
23 apprise interested parties of the pendency of the action and afford  
24 them an opportunity to present their objections;" a creditor who  
25 does not receive proper notice of the confirmation process cannot  
26

27 <sup>2</sup> The confirmation order releases "[the] Debtor from any and all debts,  
28 claims, demands and liabilities that arose before the entry of the Confirmation  
Order . . . whether or not . . . such claim has been listed on the Debtor's schedule  
of assets and liabilities filed in this case." Confirmation Order ¶¶10. It also  
voids all judgments on these pre-confirmation debts. Confirmation Order ¶¶10-13.

1 constitutionally be bound to the resulting confirmed chapter 11  
2 plan) (quoting Mullane v. Central Hanover Bank & Trust Co., 339  
3 U.S. 306, 314 (1950); In re CareMatrix Corp., 306 B.R. 478 (Bankr.  
4 D. Del. 2004).

5       Notwithstanding Plaintiffs' lack of notice, Debtor argued both  
6 in his brief and at oral argument, that once Plaintiffs found out  
7 about the confirmation order in June 1996, they were "obligated" to  
8 comply with it until they sought relief from this Court. "That  
9 they believed they had a notice defense did not alter this  
10 obligation." [Opp. Brief, 6:8].

11       The Court has reviewed the cases cited in footnote six of  
12 Debtor's opposition brief. Debtor states in footnote six, "In  
13 contrast to Plaintiffs' requirement to seek relief before violating  
14 the Confirmation Order, Caracciolo is not obligated to enforce his  
15 discharge by filing an action in the bankruptcy court in response  
16 to a creditor pursuing potentially discharged claims." (Emphasis in  
17 original). Upon further review, the Court finds that none of the  
18 cases support Debtor's position.

19       In the case of Pavelich v. McCormick, Barstow, Sheppard, Wayte  
20 & Carruth LLP (In re Pavelich), 229 B.R. 777, 781 (B.A.P. 9th Cir.  
21 1999), the Bankruptcy Appellate Panel ("BAP") reversed a bankruptcy  
22 court's denial of the debtors' motion to reopen their case to  
23 determine whether the creditor had violated the discharge  
24 injunction because the lower court found it lacked subject matter  
25 jurisdiction. The BAP held that state courts have jurisdiction to  
26 construe the scope of the discharge, and their judgments must be  
27 given full faith and credit in bankruptcy courts except when they  
28 construe the discharge too narrowly, because such a too-narrow

1 judgment may be void to the extent it offends the discharge  
2 and subject to collateral attack in federal court. Id. at 783.  
3 The Pavelich court therefore found an "exception to Rooker-Feldman  
4 . . . when the state proceeding is a legal nullity and void  
5 ab initio." Id. (citation omitted). In the course of its  
6 discussion, the Pavelich court noted:

7           Section 524(a) was derived from former  
8           Bankruptcy Act §14f, which was added in 1970 to  
9           correct a perceived abuse arising from the  
10           former status of a bankruptcy discharge as  
11           merely creating an affirmative defense that was  
12           waived if not affirmatively pleaded and proved  
13           in postbankruptcy litigation. By declaring  
14           that 'any judgment theretofore or there after  
15           obtained in any other court is null and void as  
16           a determination of the personal liability of  
17           the bankrupt' as to discharged debts, Congress  
18           was expressly making it possible for a  
19           discharged debtor to ignore a creditor's  
20           subsequent action in a nonbankruptcy court.  
21           Id. at 781 (citation omitted).

22           Pavelich does not, however, hold that Plaintiffs had the obligation  
23 to get clarification from this Court regarding whether the  
24 discharge order applied to them. Notably, the Pavelich court  
25 acknowledged that state courts have the power to construe the  
26 discharge and determine whether a particular debt is, or is not,  
27 within the scope of the discharge because a discharge in bankruptcy  
28 is a recognized defense under state law. Id. at 783. (citation  
omitted).

          As noted by Pavelich, §524(a) was enacted to protect the  
debtor who failed to appear and assert the bankruptcy defense in  
state court. Rather than be bound to a default judgment, § 524(a)  
makes such a judgment void. Nonetheless, Debtor did not ignore the  
Plaintiffs' state court lawsuit filed in April 1996. He pled, as  
an affirmative defense, his discharge in the bankruptcy, and then

1 fully participated in the trial. Thus, the issue of Debtor's  
2 discharge was squarely before the state court, but for some reason  
3 was never ruled upon.

4 Debtor also relies on In re Conseco, Inc., 330 B.R. 673  
5 (Bankr. N. D. Ill. 2005). In that case, the reorganized debtor  
6 brought an adversary proceeding for declaratory judgment that the  
7 state court action violated the discharged injunction, and moved  
8 for an order enforcing the discharge injunction against the state  
9 court plaintiffs. The court found that a "debtor confronted by a  
10 creditor seeking to collect on a debt in possible violation of a  
11 discharge injunction may either 'assert the discharge as an  
12 affirmative defense . . . in state court' or 'bring an Adversary  
13 Complaint in bankruptcy court to enforce the statutory injunction  
14 under § 524(a)(2) of the Code.'" Id. at 681 citing In re Kewanee  
15 Boiler Corp., 270 B.R. 912, 918 (Bankr. N.D. Ill. 2002) (emphasis  
16 in original).<sup>3</sup>

17 Conseco does not support Debtor's position that Plaintiffs  
18 were obligated to seek relief from this Court. To the contrary,

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19  
20 <sup>3</sup> The Kewanee court noted that "As with any debtor confronted by a creditor  
21 seeking to collect on what might be a discharged debt after a bankruptcy case is  
22 closed, [debtor] had several options in the state court cases against it: (1) to  
23 assert the discharge as an affirmative defense...in state court; (2) to remove to  
24 federal court under 28 U.S.C. § 1452(a) either the dischargeability defense or the  
25 entire state court cause of action; (3) to move to reopen its bankruptcy case....;  
26 and (4) to bring an Adversary Complaint in bankruptcy court to enforce the statutory  
27 injunction under § 524(a)(2) of the Code." 270 B.R. at 918. Interestingly, Kewanee  
28 cites In re Stucker, 153 B.R. 219, 222 (Bankr. N.D. Ill. 1993) which notes "that  
there are three ways to litigate dischargeability after a case is closed: (1) if  
a creditor pursues a lawsuit on the claim, the debtor can assert the bankruptcy  
discharge as an affirmative defense and the court with jurisdiction over that  
lawsuit can determine the issue of dischargeability under section 523(a)(3); (2)  
under Bankruptcy Rule 4007(b), either the debtor or the creditor can move to reopen  
the bankruptcy case for the purpose of filing a complaint to determine  
dischargeability; and (3) the debtor can bring an action in the bankruptcy court  
to enforce the discharge injunction against the creditor attempting to collect the  
discharged claim pursuant to section 524(a)." Id. (emphasis added).

1 Conseco reinforces the notion that since the discharge injunction  
2 is for the protection of the debtor, it would behoove the debtor to  
3 act upon one of the options listed above. Interestingly, in both  
4 Pavelich and Conseco, it was the debtor who sought relief in the  
5 bankruptcy court.

6 Lastly, the Court examined the case of In re Dabrowski, 257  
7 B.R. 394, 407 (Bankr. S.D.N.Y. 2001) which stands for the  
8 proposition that a bankruptcy court may consider whether a claim  
9 has been discharged regardless of whether the debtor raised its  
10 discharge in bankruptcy as an affirmative defense in state court.  
11 That is exactly the situation here. This Court has jurisdiction to  
12 determine whether the Plaintiffs' claim was discharged especially  
13 in light of the fact that the state court never addressed the  
14 issue.

15 In sum, Debtor's arguments regarding Plaintiffs so-called  
16 "obligation" to seek relief from the confirmation order in this  
17 Court before proceeding with their state court lawsuit against the  
18 Debtor, is simply a variation of its laches argument, which will be  
19 considered at a later date.

20 III.

21 CONCLUSION

22 The tentative ruling published on this matter is incorporated  
23 herein.

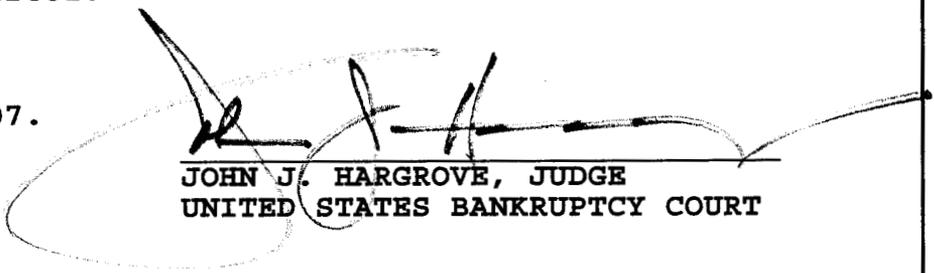
24 The Court grants Plaintiffs' request for summary judgment on  
25 the issue that their claim was not discharged by the Debtor's  
26 confirmation order and, therefore, they did not violate the  
27 discharge injunction under §§ 524(a) and 1141(d)(1)(A). Plaintiffs  
28 request to dismiss Debtor's first and second counterclaim is

1 granted.

2 The Court denies Debtor's request to grant summary judgment on  
3 the issue of whether the doctrine of laches applies to Plaintiffs.  
4 The denial is without prejudice to allow the parties the  
5 opportunity to conduct discovery. The Court also denies Debtor's  
6 request for summary judgment on the issue that the state court  
7 judgment is void.

8 This Memorandum Decision constitutes findings of fact and  
9 conclusions of law pursuant to Federal Rule of Bankruptcy Procedure  
10 7052. Plaintiffs are directed to file with this Court an order in  
11 conformance with this Memorandum Decision within ten (10) days from  
12 the date of entry thereof.

13  
14 Dated: April 13, 2007.



JOHN J. HARGROVE, JUDGE  
UNITED STATES BANKRUPTCY COURT