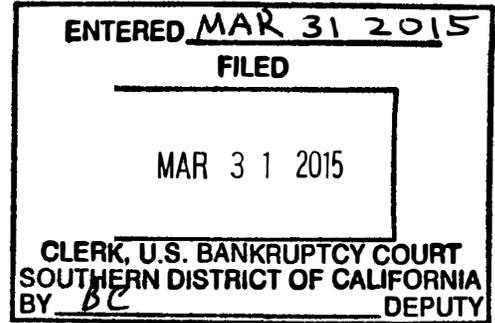


WRITTEN DECISION - NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:

Elizabeth Ann Boyd,

Debtor.

Elizabeth Ann Boyd,

Movant,

v.

Joyce Boyd,

Respondent.

Bk. No. 06-03242-PB7

MEMORANDUM DECISION

This matter came on regularly for evidentiary hearing on the motion of debtor Elizabeth Boyd to have her former mother-in-law, Joyce Boyd found to be in contempt for violation of the discharge injunction of 11 U.S.C. § 524(a)(2).^{1 2}

¹ This opinion is intended only to resolve the dispute between these parties and is not intended for publication.

² Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy

1 Debtor and her ex-husband, Brad Boyd were married on or about July 1, 1989. They
2 separated on or about July 10, 2002, and entered into a Marital Settlement Agreement
3 ("MSA") around the end of that year. In the MSA, Elizabeth and Brad each agreed to be
4 responsible for one half of the debt owed by the two of them to Brad's mother, Joyce, who
5 had loaned the couple \$95,000 some years before and had not been repaid. In the addenda
6 to the MSA, each person's half of the debt to Joyce was listed with an approximate balance
7 of \$47,500. Those addenda were attached to the MSA as Exhibits B and D with Exhibit B
8 listing obligations of Elizabeth Boyd going forward, and Exhibit D listing Brad's.

9 Within the body of the MSA, there is an express provision that states:

10 Wife shall pay, assume, and hold Husband free and harmless
11 from all obligations listed in Exhibit "B."

12 Two paragraphs below in the MSA is a reciprocal hold-harmless agreement by Brad
13 in the debts listed in Exhibit D.

14 On or about October 26, 2006, debtor Elizabeth Boyd filed a petition under chapter 7.
15 In it, she listed as one of her creditors Joyce Boyd, of Coupeville, WA, with a debt of
16 \$32,118. The debt was not identified as disputed, contingent or nonliquidated. The Court
17 docket contains a certificate of mailing stating that Joyce Boyd, of the Coupeville, WA
18 address, was sent mail notice of the filing of the bankruptcy on October 29, 2006. No
19 objection to discharge under 11 U.S.C. § 727, as to dischargeability of the debt owed to
20 Joyce Boyd was filed under 11 U.S.C. § 523(a), timely or otherwise. Nor was any
21 reaffirmation agreement entered into as to the debt owed to Joyce Boyd, prior to entry of the
22 discharge in favor of debtor, Elizabeth Boyd. That discharge was entered on the docket on
23 January 31, 2007. The Bankruptcy Noticing Center filed a certificate of service in the
24 Court's docket, certifying that it had given written notice of the discharge by first class mail
25 to Joyce Boyd at the same Coupeville, WA address, as well as other scheduled creditors.
26 That notice included the standard Form B18 explanation of the legal effects of debtor's
27 discharge.

28 Code, 11 U.S.C. §§101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Before delving into the specific facts in this matter, it is helpful to frame the
2 governing matrix for assessing alleged violations of the discharge injunction. The
3 Ninth Circuit Court of Appeals has recognized:

4 Section 524 of the bankruptcy code provides that discharge
5 "operates as an injunction against the commencement or
6 continuation of an action . . . to collect, recover or offset any
7 [discharged] debt as a personal liability of the debtor."
8 11 U.S.C. § 524(a)(2). A party who knowingly violates the
9 discharge injunction can be held in contempt under
10 section 105(a) of the bankruptcy code. See In re Bennett,
11 298 F.3d at 1069; Walls v. Wells Fargo Bank N.A., 276 F.3d
12 502, 507 (9th Cir. 2002) (holding that civil contempt is an
13 appropriate remedy for a willful violation of section 524's
14 discharge injunction). In Bennett, we noted that the party
15 seeking contempt sanctions has the burden of proving, by clear
16 and convincing evidence, that the sanctions are justified. We
17 cited with approval the standard adopted by the Eleventh Circuit
18 for violation of the discharge injunction: "[T]he movant must
19 prove that the creditor (1) knew the discharge injunction was
20 applicable and (2) intended the actions which violated the
21 injunction." (Citations omitted.)

22 In re ZiLOG, 450 F.3d 996, 1007 (9th Cir. 2006). The same opinion also looked at the issue
23 of the willfulness of the creditor, and stated:

24 To be held in contempt, the women must not only have been
25 aware of the discharge injunction, but must also have been
26 aware that the injunction applied to their claims. To the extent
27 that the deficient notices led the women to believe, even
28 unreasonably, that the discharge injunction did not apply to their
claims because they were not affected by the bankruptcy, this
would preclude a finding of willfulness.

Id. at 1009, n. 14.

There is no dispute that the discharge injunction is "a definite and specific court order
for purposes of contempt proceedings." In re Chionis, 2013 WL 6840485 (9th Cir. BAP).
Once the movant shows by clear and convincing evidence that the creditor knew the
discharge injunction applied, that the creditor intended the actions that violated the

1 discharge injunction, and that the discharge injunction was in fact violated, then the burden
2 shifts to the creditor to show why it was unable to comply with the discharge injunction.

3 If a bankruptcy court finds a willful violation of the discharge injunction, the court
4 has broad discretion in fashioning a remedy. In re Bassett, 255 B.R. 747, 758 (9th Cir. BAP
5 2000) rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002). Such sanctions may include
6 compensatory damages, including reasonable attorneys' fees. In re H Granados Commc'ns,
7 Inc., 503 B.R. 726, 734-35 (9th Cir. BAP 2013). In appropriate cases, and upon competent
8 evidence, sanctions may also include awards for emotional distress. See, e.g., In re Ritchey,
9 512 B.R. 847, 863 (Bankr. SD TX 2014).

10 Discussion

11 Returning to the facts of the instant case, and with the foregoing in mind, according
12 to the testimony counsel for Brad Boyd wrote to debtor's bankruptcy counsel, Mark Miller,
13 Esq., asserting debtor's responsibility to pay a portion of the debt to Joyce Boyd pursuant to
14 the hold-harmless provisions of the MSA. That letter was dated December 19, 2006. As
15 already noted, the debtor's discharge was entered January 31, 2007.

16 On or about January 29, 2007 Brad Boyd sent debtor an email, setting out his plan to
17 make payments to Joyce Boyd from funds he otherwise would have paid to debtor on the
18 outstanding child and spousal support arrears.

19 In the interim, on or about January 29, 2007, debtor's family law attorney responded
20 to Brad Boyd's attorney by letter, asserting that Brad had no authority to withhold any
21 monies he was obligated to pay debtor for alimony and child support. That letter states, in
22 pertinent part: "I am informed and believe that Beth has every intention of meeting her
23 obligation to Joyce Boyd."

24 Four weeks later, debtor's bankruptcy attorney Miller caused a letter to be prepared
25 and sent directly to Joyce Boyd. After stating that debtor had wanted Joyce to be excluded
26 from the bankruptcy filing, counsel's letter states:

27 Beth fully intends to fulfill her obligation to you. She strongly
28 values the ongoing relationship you have with her family and

1 wants to maintain the cordial and congenial atmosphere you
2 both have enjoyed despite the ongoing family law matters.

3 According to debtor's testimony, and her Exhibit G, she began making payments of
4 \$150 to Joyce Boyd on March 10, 2007, and made these payments most months for the rest
5 of 2007. Meanwhile, on or about May 24, 2007, debtor filed an Order to Show Cause to
6 adjust the support obligations and determine the arrears that had accrued.

7 Then, on June 14, 2007, debtor sent Joyce a second copy of an email, in which she
8 asserts she had made \$150 payments for March, April and May. In part, debtor stated:

9 It is not my desire to have you in the middle of this, but Brad is
10 placing you there . . . I just want you to know that I am
11 continuing to work toward paying you back all of the money that
12 was borrowed. I have apologized to you numerous times for
13 having some financial problems and I don't know what else to
14 do for you to see that since I am paying you back this doesn't
15 involve Brad. As you have said to me many times, whatever I
16 am able to pay is better than anything else. Regardless of what
17 Brad does, I will continue you [sic] to pay you a minimum of
18 \$150 per month.

19 The family law court filed its decision on the OSC on December 24, 2007. Of
20 relevance to this discussion, it examined Brad's withholding funds from debtor and paying
21 them over to his mother. The Superior Court held that the hold-harmless provision of the
22 MSA had not been triggered because there was no evidence that Joyce Boyd had made any
23 formal demand on Brad Boyd to pay the whole debt. Interestingly, the Superior Court
24 wrote:

25 To the contrary, the only evidence before the Court supports
26 Elizabeth's view that Joyce Boyd willingly allowed Elizabeth to
27 reduce her monthly payments. Attached to her Reply
28 Declaration . . . is a letter from Joyce Boyd to Elizabeth
29 That letter states in relevant part: "When you went through your
30 bankruptcy and told me you could only pay me \$150 on the
31 loan, I was very glad you planned to continue to honor the
32 agreement."

1 The letter to which the Superior Court alluded is Exhibit H in the record before this
2 Court. There were several paragraphs after the language quoted by the Superior Court.
3 They are:

4 I honestly expected that when you were back on your feet you
5 would return to the original payments. I have to tell you that I
6 am being financially stretched with my own bills and I need for
you to go back to the \$440.00 as soon as possible.

7 Meanwhile, Exhibit G indicates debtor made \$150 payments into 2008, then
8 increased them to \$300 per month in April, 2008, and continued at that level through
9 October, 2009, when the payments from debtor ceased. On February 7, 2008, Joyce Boyd
10 sent a note to debtor stating:

11 I am at my wits end. Financial problems have me terribly
12 distressed. I have to have the \$440 you owe me every month at
the beginning of the month.

13 A few weeks later, Joyce Boyd sent a typed letter to both debtor and Brad Boyd. In
14 it, she reviewed some of the history to that point, including the payments she had received
15 up until then. Her concluding paragraphs stated:

16 The fact remains that the current debt agreement is for me to be
17 paid at the rate of \$880 a month. At no point did I agree to the
18 reduced amount of \$150 a month. Therefore this letter is a
19 demand upon both of you to honor your agreement and pay me
20 in full, each and every month. Since half of the debt has been
21 paid, I will accept \$440 each month but not less. If the
22 payments are not started as described above and continued I will
have no choice but to initiate a lawsuit naming you jointly and
collectively as defendants.

23 Exhibit J.

24 Four weeks later, an attorney in Washington state sent a letter to debtor. He asserted
25 he represented Joyce Boyd and said that debtor had agreed to repay the balance of the loan
26 at \$300 per month. He prepared and enclosed a promissory note to that effect, and an
27 authorization for debtor's bank to make automatic withdrawals and remittance to Joyce
28 Boyd. (Exhibit K). Debtor testified she did not sign the promissory note, but she did start

1 paying \$300 per month in April, 2008, and continued through October, 2009. Joyce Boyd
2 testified the Washington attorney was a good friend of her daughter's. Joyce Boyd met with
3 him once, paid him nothing, and did not authorize him to do anything. Which seems
4 incongruous given the details of the loan balance and the terms of the note.

5 On November 24, 2009, debtor sent Joyce Boyd an email. In it, she referenced a
6 phone call from Joyce "a few days ago," and declared that the debt to Joyce had been
7 "dismissed" in the bankruptcy. Debtor wrote:

8 The advice from my attorney and accountant when filing for
9 bankruptcy was to follow the court's ruling once decided and to
10 no longer pay for any past debt that was legally forgiven. I want
11 to inform you that I am following their advice and of course
12 apologize that life circumstances led to this unfortunate financial
13 situation.

12 Exhibit P.

13 Joyce Boyd responded by email dated December 9, 2009. In it, she said: "I am
14 contacting a lawyer and he will take this from here. Joyce"

15 No evidence of any more recent communication from Joyce Boyd to Elizabeth Boyd
16 about the debt was offered at the evidentiary hearing. However, the ex-husband, Brad
17 Boyd, through his attorney, Mr. Damasco, wrote to debtor about the debt and indicating that
18 Joyce Boyd was making demand on Brad for payment. (Exhibit N) Subsequently, Brad
19 Boyd raised the issue in the family law court, and obtained a judgment against debtor for
20 \$24,785.50, plus \$3,717 in accrued interest.

21 The threshold question for the Court is whether Joyce Boyd knew of the bankruptcy
22 and of the effect of the discharge. The Court finds that she did. Indeed, she made it clear
23 both that she received notice of the bankruptcy filing and that she feared that debtor's
24 obligation on the debt would be discharged. The discharge was entered January 31, 2007, as
25 noted. There was no evidence proffered which even asserted that Joyce Boyd did not
26 receive written notice of the discharge. On March 12, 2007, debtor wrote Joyce Boyd and
27 said she would start sending Joyce Boyd what she could. It is clear to the Court that Joyce
28

1 Boyd knew of the bankruptcy, and of the discharge. In addition, the noncontroverted record
2 indicates she received Form B18, which explained the legal effects of the discharge.

3 The next question is whether the discharge injunction was violated. The Court
4 concludes it was, multiple times, by Joyce Boyd in her efforts to obtain a stream of
5 payments from the otherwise discharged debt.

6 The issue remaining in determining whether some form of sanctions might be
7 appropriate is whether Joyce Boyd's actions were willful. In re Nash, 464 B.R. 874 (9th Cir.
8 BAP 2012).

9 The Ninth Circuit applies a two part test to determine whether the willfulness
10 standard has been met. First, did the offending party know that the discharge injunction
11 applied. Second, did the party intend the actions that violated the discharge injunction. In
12 applying the second prong, the focus is on whether the conduct in fact violated the discharge
13 injunction. The focus is not on the offending party's subjective beliefs or intent. In re
14 Bassett, 255 B.R. 747, 758 (9th Cir. BAP 2000), rev'd on other grounds, 285 F.3d 882
15 (9th Cir. 2002). It has been held that: "A party's negligence or absence of intent to violate
16 the discharge order is not a defense against a motion for contempt." In re Jarvar, 422 B.R.
17 242, 250 (Bankr. D. Mont. 2009).

18 At least as of the date of debtor's note to Joyce Boyd expressing the intent to pay
19 what she could (March 12, 2007), Joyce Boyd knew of the bankruptcy, and had been served
20 with the discharge and the explanation contained in Form B18. Moreover, she had known
21 since the onset of the bankruptcy of the effect of a discharge. The Court finds and
22 concludes that Joyce Boyd knew of the applicability of the discharge to the debt owed to her
23 by debtor.

24 The Court also finds and concludes that things got a bit more murky with the
25 March 12 note from debtor to Joyce Boyd, stating an intent to pay the debt. As a matter of
26 bankruptcy law, it is clear that a reaffirmation agreement entered into and approved by the
27 Court before entry of discharge is required to create an enforceable obligation. That did not
28

1 occur in this case. Whatever Joyce Boyd may have thought, after entry of the discharge she
2 had no legally enforceable obligation owed to her by debtor.

3 Having found that Joyce Boyd willfully violated the discharge injunction, the Court
4 is left with the question of whether sanctions are warranted. The Court has struggled with
5 that question under the circumstances of this case. In the MSA, negotiated by both debtor
6 and Brad Boyd, and with debtor represented by counsel, the parties agreed to reciprocal hold
7 harmless provisions. Debtor had to know that obligation was not dischargeable under
8 11 U.S.C. § 523. The ex-husband, Brad Boyd, tried to enforce that agreement both through
9 self-help (by deducting funds from payments owed to debtor) and in the Superior Court.
10 The latter found the effort premature because there was no effort by Joyce Boyd at the time
11 to enforce the whole debt against her son, Brad. But the hold-harmless obligation owed by
12 debtor to Brad was not discharged, did not go away, and was ultimately enforced in the
13 family law court.

14 Debtor has requested an award of money damages for emotional distress. The Court
15 finds and concludes that the evidence of the ongoing relationship between debtor and Joyce
16 Boyd belies her claim of emotional distress. Indeed, she has stated that her own lawyers
17 told her she continued to owe the debt. In any event, debtor has not shown by any
18 competent evidence that emotional distress was suffered by her in any reasonable measure.
19 She has failed to carry her burden of proving its nature, extent, duration, and effect. The
20 request for damages for emotional distress is denied.

21 Debtor also asks for return of the \$7,700 she showed she had paid over the post-
22 discharge period to Joyce Boyd. Neither the fact nor amount of the payments has been
23 contested. However, it appears that debtor has received credit for those funds in the state
24 court's award on the hold-harmless to Brad Boyd. Debtor should not be heard to ask for
25 return of the funds she sent to Joyce Boyd while also receiving credit for their payment in
26 reducing her obligation to Brad under the hold-harmless provision. For the foregoing
27 reasons, debtor's request for an award returning the \$7,700 is denied.

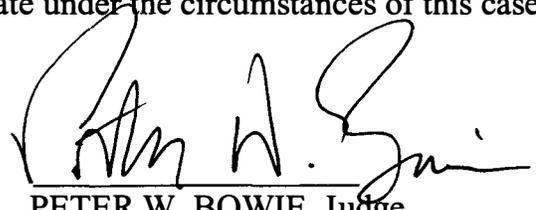
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1 The remaining issue is attorney fees. As already noted, the Court has found that
2 Joyce Boyd willfully violated the discharge injunction. According to the record in this case,
3 the only act by Joyce Boyd after debtor told her in writing debtor was relying on the
4 discharge on November 24, 2009 was to respond on December 9, 2009 that she would take
5 the matter to a lawyer. The record does not reflect Joyce Boyd doing anything after that
6 except at some point making a demand on Brad Boyd on the underlying obligation, on
7 which he was still liable. To be sure, there were payments from 2007-2009, and some
8 communications, as well. The Court notes that at the onset of these proceedings, counsel
9 was asserting a conspiracy between Joyce Boyd and her son Brad. Assuming for a moment
10 there was some sort of effort by Brad to enforce the hold-harmless provision so his mother
11 would be repaid what she was owed – which indeed did occur – it was not unreasonable to
12 seek to enforce the hold-harmless without Brad having to pay the whole debt himself and
13 then pursue recovery from debtor.

14 The Court recognizes that counsel for debtor put in substantial time while seeking
15 redress for violation of the discharge injunction. As the facts came more clear, however, the
16 Court has found debtor suffered no proven emotional distress, and received credit for the
17 funds she sent Joyce Boyd on debtor's own nondischargeable debt to Brad. Given those
18 facts, given that debtor had said even her lawyers told her she owed the money, given that
19 Joyce Boyd ceased her efforts to collect from debtor after debtor said she would pay no
20 more, the Court finds and concludes that each party should bear her own attorney's fees and
21 costs. No sanctions are necessary or appropriate under the circumstances of this case.

22 IT IS SO ORDERED.

23
24 DATED: March 31, 2015


PETER W. BOWIE, Judge
United States Bankruptcy Court

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27
28

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In re Elizabeth Ann Boyd, Bk. No. 06-03242-PB7

CERTIFICATE OF MAILING

The undersigned, a regularly appointed and qualified employee in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

MEMORANDUM DECISION

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed via first class mail to the party at their respective address listed below:

Elizabeth Ann Boyd
2720 Elyssee Street
San Diego, CA 92123
Debtor

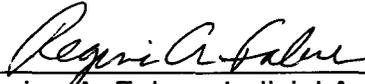
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Gerald H. Davis
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Trustee

Said envelope(s) containing such document was deposited by me in the City of San Diego, in said District on March 31, 2015.



Regina A. Fabre, Judicial Assistant