

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ABDUR AMIN RASHID : CIVIL ACTION
: :
: No. 96-512

ABDUR A. RASHID, Appellant : CIVIL ACTION
: :
v. : :
: :
VIRGINIA POWEL, Appellee : No. 95-4243

MEMORANDUM AND ORDER

Norma L. Shapiro, J.

June 2, 1998

Abdur Rashid ("Rashid") filed a motion for declaratory relief and a motion for summary judgment on a Bankruptcy Court complaint, and the United States Attorney filed a cross-motion for summary judgment. The Bankruptcy Judge granted the United States Attorney's motion for summary judgment and Rashid appealed. The decision of the Bankruptcy Court was correct and will be affirmed.

FACTS

I. Rashid's Criminal Conviction and Forfeiture

Rashid was convicted on 54 counts of mail fraud, wire fraud, money laundering and criminal forfeiture involving a fraudulent commercial loan operation defrauding almost 50 individuals of more than \$1.6 million. Rashid was sentenced to 168 months in prison, assessed \$2,700, fined \$15,000, and ordered to pay restitution of \$1,696,470. his conviction and sentence were affirmed on appeal. United States v. Rashid, 666 F.3d 3314 (3d

Cir. 1995), cert. denied, 516 U.S. 1121 (1996).

Following sentencing, Rashid's interest in real property in Philadelphia was forfeited to the United States, pursuant to 18 U.S.C. § 982, by district court order of May 18, 1994. The decision was affirmed on August 4, 1995. United States v. Rashid, 66 F.3d 314 (3d Cir. 1995). A related district court decision that Rashid's wife had no right to challenge the forfeiture order was also affirmed. United States v. Rashid, 66 F.3d 314 (3d Cir. 1995).

II. Rashid's Bankruptcy Action

Rashid filed a Chapter 7 bankruptcy petition on July 6, 1994. On August 4, 1994, the Bankruptcy Court Clerk mailed a notice of bankruptcy to creditors listed by Rashid in the petition, one of which was the United States. (Memorandum Opinion of Bankruptcy Judge Bruce Fox, May 30, 1995, p. 3).

On August 19, 1994, the United States Attorney filed the forfeiture judgment in Rashid's criminal case as a lien in Philadelphia County. Rashid, believing that the lien was improper, filed a Bankruptcy Court complaint for alleged violation of the stay imposed by the bankruptcy filing, and served the complaint on the United States Attorney on October 28, 1994. By letter of November 10, 1994, the United States Attorney requested that the Prothonotary for the Philadelphia Court of Common Pleas remove the judgment lien, but the lien was not immediately removed. It remained in effect until October, 1995, when the United States Attorney, having learned that it had not

been removed, again requested that the Prothonotary remove it.

Rashid filed a motion for declaratory relief and a motion for summary judgment on March 22, 1995, and the United States filed a cross-motion for summary judgment on March 24, 1995. On May 30, 1995, Bankruptcy Judge Fox found that: 1) whether Rashid's restitution obligation was dischargeable in bankruptcy was not before him; 2) the forfeiture order was not a fraudulent transfer within the meaning of 18 U.S.C. § 548; and 3) Rashid failed to show he was harmed by the temporary lien.

Rashid appeals all three aspects of Judge Fox's decision. He alleges that: 1) the complaint can fairly be considered to seek dischargeability of the restitution obligation; 2) the Bankruptcy Court failed to consider the order of forfeiture a "nullity" when the lien and complaint were filed; 3) there is evidence he has been injured; and 4) the Bankruptcy Court should have granted his motion to reinstate the complaint to consider damages against the United States for intentional deception on the court. The government's brief in response argues that Bankruptcy Judge Fox's decision was proper in all respects.

DISCUSSION

I. Standard of Review

In reviewing a Bankruptcy Court decision, a district court applies a different standard of review to questions of fact and questions of law. Rule 8013 of the Rules of Bankruptcy Procedure states:

on an appeal the district court . . . may affirm, modify, or

reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Fed. R. Bankr. P. 8013. When a bankruptcy judge's legal conclusions are challenged, the district court makes an independent determination of the applicable law. Matter of Dunes Casino Hotel, 63 B.R. 939, 944 (D.N.J. 1986). Because the Bankruptcy Court's decision should be affirmed under either standard, the court will view each issue as a mixed question of law and fact, and will conduct a plenary review of the Bankruptcy Court's decision.

II. Dischargeability of the Restitution Obligation

Judge Fox found that whether the restitution obligation was dischargeable in bankruptcy was not before the Bankruptcy Court. Rashid has appealed that determination.

The complaint consists of seven pages, including ten numbered paragraphs of allegations. None of the paragraphs suggests that Rashid seeks to have the restitution obligation discharged.¹ The gravamen of Rashid's complaint concerns the

¹ The first paragraph merely states that Rashid seeks damages and declaratory relief. The second paragraph identifies Rashid and his bankruptcy petition. The third paragraph identifies when the bankruptcy petition was filed. The fourth recites the criminal indictment and alleges it is based on perjury. The fifth asserts that Rashid was denied bail because of certain unethical actions between the judge in Rashid's criminal action and the prosecuting attorney. The sixth paragraph alleges in more detail that Rashid's conviction was based on perjured testimony and the prosecutor's disobedience of the court's orders. The seventh paragraph details Rashid's conviction and sentence, including the fine, the special

lien filed after the bankruptcy petition in alleged violation of the automatic stay. The prayer for relief asks for a declaration that the lien is fraudulent and in violation of the Bankruptcy Code and should be set aside. Rashid also seeks compensatory damages of \$1,714,170, punitive damages, a set aside of the fine and forfeiture based on Rashid's improper conviction, and "such further relief as this Court may deem just and proper." (Complaint, Prayer for Relief, ¶ 8).

Aside from the prayer for relief, discharge of the restitution obligation is mentioned only in paragraph 9 of the complaint, where Rashid alleges that it was improper for the United States to file the lien because it "knew . . . the restitution . . . is dischargeable under the Bankruptcy Code." (Complaint, ¶ 9). The Bankruptcy Court read this paragraph as another example of improper government action, not a request for a declaration that the restitution was dischargeable. Construing Rashid's pro se complaint liberally, as the court is obligated to do, Zilich v. Lucht, 981 F.2d 694 (3d Cir. 1992), the court finds that Rashid was seeking to have the dischargeability of the restitution obligation decided at that time. In re Kennerly, 995 F.2d 145, 146-47 (9th Cir. 1993).

Rashid argues that restitution is dischargeable because it

assessment and forfeiture. The eighth paragraph recites a section of Rashid's bankruptcy petition prohibiting certain actions by creditors. The ninth paragraph alleges that the lien filed was fraudulent and contrary to the bankruptcy provision of paragraph eight. The tenth paragraph alleges that the lien will cause certain harms to Rashid.

is for the benefit of individual victims, and the bankruptcy code only exempts debts "for a fine, penalty, or forfeiture payable . . . for the benefit of a governmental unit." 11 U.S.C. § 523(a)(7) (emphasis added). However, "restitution orders imposed in [criminal] proceedings operate for the benefit of the State" and fall "within the meaning of [11 U.S.C.] § 523(a)(7)." Kelly v. Robinson, 479 U.S. 36, 53 (1986). A Chapter 7 Debtor's criminal restitution order is not dischargeable in bankruptcy. Id. If the Bankruptcy Court had considered the request for declaratory relief that restitution obligation was dischargeable, it would have had to deny Rashid's request. The Bankruptcy Court's erroneous finding that the issue was not before it was harmless. Rashid can not obtain declaratory relief that the restitution is dischargeable.

III. The Validity of the Forfeiture Order

After the conclusion of the criminal trial, the district court ordered forfeiture of the property at issue, and Rashid appealed the forfeiture. The Court of Appeals for the Third Circuit upheld the district court decisions on Rashid's conviction, sentence and forfeiture. Rashid now argues that the Bankruptcy Court should have found the forfeiture was improperly granted, and a "nullity." (Appellant's brief, p. 14).

An argument that the forfeiture was a "nullity" is directed to the merits of the forfeiture order, not its subsequent impact on his bankruptcy. Rashid's argument that the Bankruptcy Judge's decision was in error because the appeal of the forfeiture order

was pending is now moot. The Court of Appeals has affirmed the forfeiture order on the merits; this court cannot and will not disturb that decision.

IV. Evidence of Rashid's Injury from the Lien

Rashid sought compensatory and punitive damages for the lien filed by the government. In its motion for summary judgment, the United States argued he had failed to show any compensatory damage, and that punitive damages were unavailable under the Bankruptcy Code. The Bankruptcy Court agreed. On appeal, Rashid renews his argument that the government intended to harm his bankruptcy estate, and punitive damages are mandated.

Bankruptcy Rule 7056 incorporates the standard for a motion for summary judgment in Fed. R. Civ. P. 56; the motion may not be granted unless the moving party demonstrates that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-323 (1986). All ambiguities and inferences must be resolved in favor of the non-moving party. See Celotex Corp., 477 U.S. at 323. Once the moving party has carried its burden, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts. . . . [T]he non-moving party must come forward with specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-587 (1986)(citations omitted). No damages can be "awarded as a result of the violation of the automatic stay

... [if] there was no evidence that the debtor suffered any harm." In re Whitt, 79 B.R. 611, 616 (Bankr. E.D. Pa. 1987).

Rashid has offered no evidence he was actually injured by the imposition of the lien from August 19, 1994, to November 10, 1994, when the government first requested its removal. There is evidence that the lien was not actually removed until October, 1995, but the delay in removing it does not show Rashid was injured by its imposition or pendency. Rashid was not residing in the property at any time the lien was in place. He failed to produce any evidence that the government attempted or threatened to foreclose on the lien, or that he attempted to sell or mortgage his interest in the property. His conclusory argument that he was injured by the lien, without any evidentiary support, does not carry his burden. See McHenry v. Key Bank, 179 B.R. 165, 168 (9th Cir. BAP 1995); Gordon v. Dennis Burlin Sales, Inc., 174 B.R. 257 (Bankr. N.D. Ohio 1994). Without any evidence that Rashid actually suffered harm from the lien, whatever its duration, the Bankruptcy Court could not award compensatory damages.

Punitive damages are unavailable against the United States. The Bankruptcy Code expressly provides that the court may issue an order or judgment "against a governmental unit, . . . including an order or judgment awarding a money recovery, but not including an award of punitive damages." 11 U.S.C. § 1106(a)(3) (West Supp. 1998). This provision, amended in October, 1994, applies retroactively to all cases "commenced . . . before, on,

and after" the amendment. Bankruptcy Reform Act of 1994, Pub. L. 103-394, § 702 (1994).

Rashid failed to carry his burden in opposition to the government's motion for summary judgment on compensatory damage, and punitive damages are precluded by the Bankruptcy Code.

CONCLUSION

Although the dischargeability of the restitution obligation was before the Bankruptcy Court, the restitution obligation is not dischargeable in bankruptcy. The forfeiture order has been affirmed by the Court of Appeals for the Third Circuit, and is not a "nullity." Rashid has failed to provide any evidence of actual damage from the lien, and punitive damages are unavailable. The decision of the Bankruptcy Court will be affirmed.

An appropriate order follows.

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ORDER

AND NOW this 2nd day of June, 1998, upon consideration of appellant's Consolidated Brief and Appendix, and appellee's Consolidated Brief and Appendix, it is **ORDERED** that:

The decision of the Bankruptcy Judge is **AFFIRMED**.

Norma L. Shapiro, J