

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

In re JANET L. NATALE, : CIVIL ACTION
 Debtor : :
 : NO. 04-2839

MEMORANDUM AND ORDER

McLaughlin, J.

April 19, 2006

French and Pickering Conservation Trust, Inc. ("French and Pickering") appeals from the bankruptcy court's order of May 20, 2004 granting the debtor, Janet L. Natale, a discharge under Section 727 of Title 11 of the United States Code ("Bankruptcy Code"). The Court will remand the case to the bankruptcy court to explain the basis for its decision.

I. Facts and Procedural History

This case has a lengthy procedural history. The Court recites here only those facts that are part of the record and that are relevant to the instant decision. In 1998, Ms. Natale and her then-husband Ronald L. Natale jointly petitioned for bankruptcy under Chapter 13 of the Bankruptcy Code. In 2002, after filing for divorce from Mr. Natale, Ms. Natale converted her part of the petition into a petition under Chapter 7 of the Bankruptcy Code. The United States trustee convened a meeting of Ms. Natale's creditors pursuant to Section 341 of the Bankruptcy Code on December 12, 2002. At that meeting, French and

Pickering's counsel and the United States trustee asked Ms. Natale questions regarding the status of her interest in a property at 514 Pughtown Road. (Bankr. Pet. 98-34221, Doc. Nos. 1 and 89; Dec. 12, 2002 Section 341 Hr'g Tr. at 12-13, 20-21.)

On January 21, 2003, French and Pickering filed a document entitled "Objection to Discharge" in the bankruptcy proceeding. French and Pickering argued that Ms. Natale was not entitled to discharge because she had improperly transferred property belonging to her estate to Mr. Natale. French and Pickering did not identify the allegedly transferred property; presumably, it included the property at 514 Pughtown Road. (Objection to Discharge.)

The bankruptcy court held a hearing on the objection on February 19, 2003. The bankruptcy court dismissed the objection the following day, for reasons stated on the record at the hearing.¹ On May 20, 2004, the bankruptcy court granted Ms. Natale a discharge under 11 U.S.C. § 727. (Bankr. Ct.'s Feb. 20, 2003 Order; Bankr. Ct.'s May 20, 2004 Order.)

II. Jurisdiction

This Court has appellate jurisdiction over the bankruptcy court's final order discharging Ms. Natale, pursuant

¹ French and Pickering appealed this decision, but the district court dismissed the appeal without prejudice on June 22, 2004. (Civ. Act. No. 03-1871, Doc. No. 11.)

to 28 U.S.C. § 158(a). This Court may affirm, modify, or reverse the bankruptcy court's order, or remand with instructions for further proceedings. Fed. R. Bankr. P. 8013.

Although French and Pickering previously appealed the bankruptcy court's dismissal of its objection to discharge, the Court finds that the present appeal is not precluded by res judicata, collateral estoppel, or the law of the case because the earlier appeal was dismissed without prejudice, and not on the merits. See Venuto v. Witco Corp., 117 F.3d 754, 760 (3d Cir. 1997) (when an earlier court dismisses a claim "without prejudice," res judicata does not bar a party from raising that claim in a subsequent action).

III. Analysis

Section 727(a) of the Bankruptcy Code provides that a court shall grant the debtor a discharge unless one of twelve exceptions applies. 11 U.S.C. § 727(a). A creditor may object to discharge by filing a complaint no later than sixty days after the first meeting of the creditors. 11 U.S.C. § 727(c); Fed. R. Bankr. P. 4004(a).² Rule 4004(c) of the Federal Rules of Bankruptcy Procedure provides, in relevant part, that if no creditor has filed a complaint objecting to discharge within the

² Alternatively, within that sixty-day period, a creditor may request an extension of time to file the complaint. Fed. R. Bankr. P. 4004(b).

specified time period, "the court shall forthwith grant the discharge." Fed. R. Bankr. P. 4004(c).

French and Pickering argues on appeal that the bankruptcy court erred in granting Ms. Natale a discharge. The bankruptcy court did not state its reasons for granting discharge in its May 20, 2004 Order. Even if the Court assumes that the bankruptcy court granted Ms. Natale discharge because it had dismissed French and Pickering's "Objection to Discharge," the Court cannot determine if that dismissal was erroneous because the Court cannot ascertain the bankruptcy court's reasons for that dismissal.

At the February 19, 2003 hearing on French and Pickering's objection, the Bankruptcy Court noted that French and Pickering had failed to properly file a complaint objecting to discharge, as required by Federal Rules of Bankruptcy Procedure. (Feb. 19, 2003 Hr'g Tr. at 11-12.)

The bankruptcy court also entertained the parties' arguments regarding whether Ms. Natale was claiming a homestead exemption, and whether French and Pickering had a valid objection to her claim of exemptions. Prior to the hearing, French and Pickering had filed, and the bankruptcy court had sustained, an Objection to Claim for Exemption, on the ground that the property at 514 Pughtown Road was not, and could not be, a residential

property.³ French and Pickering reiterated its arguments about the homestead exemption in its "Objection to Discharge" and at the hearing. (Feb. 19, 2003 Hr'g Tr. at 5-11, 13; Objection to Discharge.)

Ultimately, the bankruptcy court ruled:

[T]his is couched as an objection to discharge . . . although it speaks principally to allegedly improper objections.⁴ But be that as it may, however it is viewed, at this juncture it does not seem to me . . . as though there is any merit to either an objection to discharge or an objection to exemptions. Ergo, these collective objections, if that is what they are, are collectively overruled.

(Feb. 19, 2003 Hr'g Tr. at 15-16.)

The Court cannot ascertain whether the bankruptcy court: 1) dismissed the objection to discharge because it was not properly filed as a complaint under Fed. R. Bankr. P. 4004(a); 2) deemed, in the exercise of its discretion, the objection to be a properly filed complaint, but dismissed the objection on the merits; 3) treated and dismissed the objection as an objection to exemptions; and/or 4) dismissed the objection for some other reason.

³ French and Pickering filed the Objection to Claim for Exemption on January 13, 2003. Ms. Natale did not formally oppose the objection because she had not claimed a homestead exemption in the property. The bankruptcy court sustained the objection to exemption on February 12, 2003. (Objection to Claim of Exemption; Feb. 19, 2003 Hr'g Tr. at 6; Bankr. Ct.'s Feb. 12, 2003 Order.)

⁴ This may be a transcriber's error. The Court believes that the bankruptcy court intended to say "improper exemptions."

If the bankruptcy court treated French and Pickering's objection to discharge as a valid complaint objecting to discharge, such a complaint initiates an adversary proceeding under Fed. R. Bankr. P. 7001. Upon issuing a final decision in an adversary proceeding, a bankruptcy court must make findings of fact and state conclusions of law. Fed. R. Bankr. P. 7052 (incorporating Fed. R. Civ. P. 52). See also In re David Louis Cohn, 54 F.3d 1108, 1118 (3d Cir. 1995) (district court acted beyond its authority in making its own factual findings in a bankruptcy appeal because "factual findings are only properly made by the bankruptcy court after a hearing where both parties have an opportunity to offer such evidence as they deem appropriate").

The Court will therefore remand this case to the bankruptcy court to state its reasons for granting Ms. Natale a discharge, and if necessary, its findings of fact and conclusions of law regarding French and Pickering's objection to discharge.

An appropriate Order follows.

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ORDER

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April 19, 2006

AND NOW, this 19th day of April, 2006, upon consideration of French and Pickering Conservation Trust, Inc.'s appeal from the bankruptcy court's Order of May 20, 2004 (Docket No. 1), and the appellant's briefs, IT IS HEREBY ORDERED that the case is REMANDED to the bankruptcy court for further proceedings consistent with the Court's memorandum of today's date.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.