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U.S. BANKRUPTCY COURT
DISTRICT OF HAWAII
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re SHARON HICKS, Debtor.	Case No. 97-00759 Chapter 7
JAMES M. SATTLER, Plaintiff, vs. SHARON HICKS, Defendant.	Adversary Proceeding No. 02-00005

ENTERED ON DOCKET
MAY 17 2002

MEMORANDUM DECISION REGARDING DEFENDANT'S
MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM

Defendant's Motion to Dismiss Complaint for Failure to State a Claim ("Motion"), filed February 14, 2002, came on for hearing on March 15, 2002. Christopher A. Dias, Esq., appeared for Defendant Sharon Hicks; Plaintiff James M. Sattler, Esq., appeared *pro se.*

At the hearing, I made an oral ruling in favor of Ms. Hicks, but raised *sua sponte* an additional issue regarding offset and instructed the parties to file post-hearing memoranda on this issue. Both parties have done so. I also instructed the parties to file, by April 26, 2002, a written stipulation as to whether or not a further hearing on the issue of offset was necessary. Because the parties have not filed such a stipulation, I will decide the matter without a further hearing.

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FACTS

Ms. Hicks sued Mr. Sattler in the Circuit Court of the First Circuit, State of Hawaii. Mr. Sattler filed a counterclaim against Ms. Hicks. The state court entered a judgment on June 9, 1994 (the "Judgment"), pursuant to which the state court dismissed Ms. Hicks' complaint and entered judgment in favor of Mr. Sattler and against Ms. Hicks on the counterclaim. Ms. Hicks appealed. The Intermediate Court of Appeals of the State of Hawaii affirmed the Judgment in favor of Mr. Sattler on the counterclaim but vacated the dismissal of Ms. Hicks' complaint and remanded the matter for further proceedings. See Summary Disposition Order No. 97-13, filed February 11, 1997 (attached as Ex. "1" to Plaintiff's Complaint).

On March 11, 1997, Ms. Hicks filed a voluntary petition under Chapter 7 of the Bankruptcy Code. Her initial schedules indicated that there were no assets from which a distribution to creditors could be made. Accordingly, the court issued and mailed a Notice of Commencement of Case (Case No. 97-00759), filed March 17, 1997, which advised the creditors that there appeared to be no assets available for liquidation and distribution to creditors, instructed creditors not to file proofs of claim unless the court gave further notice, and did not set a deadline for filing proofs of claim.

In her initial schedules and statement of financial affairs, Ms. Hicks did not list either her claims against Mr. Sattler or Mr. Sattler's Judgment against her. On May 20, 1997, however, Ms. Hicks filed amended Schedules "B" and "F" and an amended Statement of Financial Affairs, in which she disclosed both her claims and the Judgment. See Docket Entry No. 17 (Case No. 97-00759). Ms. Hicks also filed (on May 20, 1997) a certificate of service

stating that she mailed the amended schedules and statement of financial affairs to Mr. Sattler at his correct address. See Docket Entry No. 17 (Case No. 97-00759).

On June 20, 1997, the court issued a discharge order in favor of Ms. Hicks. On July 7, 1997, the court issued a final decree which closed the bankruptcy case.

The state court proceedings apparently resumed at some point, and a dispute arose about the effect of Ms. Hicks' bankruptcy filing and discharge on the parties' claims. Mr. Sattler sought to reopen the bankruptcy case in order to resolve this dispute. The court reopened Ms. Hicks's bankruptcy case pursuant to a stipulation between Mr. Sattler and Ms. Hicks which was filed on March 16, 2001.

On January 17, 2002, Mr. Sattler filed the complaint which commenced this adversary proceeding. In summary, Mr. Sattler alleges that (1) Ms. Hicks' debt to him under the Judgment has not been discharged, and (2) Ms. Hicks' claims against him belong to the bankruptcy estate and not Ms. Hicks, and therefore Ms. Hicks should be enjoined from pursuing those claims.

Ms. Hicks has moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) (made applicable by Fed. R. Bankr. P. 7012), for failure to state a claim upon which relief can be granted. She argues that her debt to Mr. Sattler was was discharged because it was listed in Defendant's bankruptcy schedules and that her claims against Mr. Sattler were abandoned to her when the court closed her bankruptcy case.

Because the parties have presented matters outside the complaint, specifically the documents filed in the bankruptcy case and contained in the court's records, I must decide Defendant's motion pursuant to Fed. R. Civ. P. 56(c) (made applicable by Fed. R. Bankr. P.

7056). See Fed. R. Civ. P. 12(b).

DISCUSSION

1. Discharge of the Judgment

Except as provided in 11 U.S.C. § 523, the discharge dated June 17, 1997, operated to discharge Ms. Hicks from all debts that arose before she filed her bankruptcy petition. 11 U.S.C. § 727(b). Ms. Hicks' debt under the Judgment arose before she filed her bankruptcy petition. Mr. Sattler claims, however, that the Judgment is excepted from the discharge under 11 U.S.C. § 523(a)(3), which excepts from discharge a debt not listed in time for the creditor to file a timely proof of claim, unless the creditor had notice or actual knowledge of the bankruptcy case.[1] Mr. Sattler's argument is incorrect for three reasons.

First, section 523(a)(3) applies only to debts which are not scheduled in accordance with section 521(1). Ms. Hicks did eventually list Mr. Sattler's judgment in her amended schedules and statement of affairs. A debtor is entitled to file amended schedules as a matter of right at any time before the case is closed. Fed. R. Bankr. P. 1009(a). The debt therefore was listed and scheduled as required under section 521(1).

Second, section 523(a)(3) only applies to a debt which was not scheduled soon enough to permit the creditor to file a timely proof of claim. In Ms. Hicks' case, however, the court has never set a deadline for filing proofs of claim. In such a case, section 523(a)(3)(A) simply "'is not triggered.'" In re Beezley, 994 F.2d 1433, 1436 (9th Cir. 1992) (O'Scannlain, J., concurring), quoting In re Walendy, 118 B.R. 774, 775 (Bankr. C.D. Cal. 1990). Where no bar

[1]Mr. Sattler apparently relies on 11 U.S.C. § 523(a)(3)(A), which pertains to debts which are not of the kinds specified in under § 523(a)(2), (4) or (6). Mr. Sattler has not alleged or argued that Judgment arises out of claims of the kind specified in those sections.

date has been set, a creditor can always file a "timely" proof of claim. See In re Venegas, 257 B.R. 41, 46-47 (Bankr. D. Idaho 2001); In re Maroney, 195 B.R. 452, 454 (Bankr. D. Ariz. 1996); In re Hicks, 184 B.R. 954 (Bankr. C.D. Cal. 1995). Thus, section 523(a)(3)(A) does not apply here.

Third, even if a creditor's claim is not scheduled and the court sets a bar date, section 523(a)(3)(A) still does not except from discharge the claims of a creditor who "had notice or actual knowledge of the case in time" to file a timely proof of claim. On May 20, 1997, Ms. Hicks' bankruptcy attorney filed a certificate showing that he mailed to Mr. Sattler copies of the amended Schedules "B" and "F" and the amended Statement of Financial Affairs. See Certificate of Service (Case No. 97-00759), filed May 20, 1997. The amended schedules and amended statement also attached a certificate of service naming Mr. Sattler. See Docket Entry No. 17 (Case No. 97-00759), filed May 20, 1997. A certificate of mailing raises the presumption that the notice was received. In re Bucknum, 951 F.2d 204, 206-07 (9th Cir. 1991). Mr. Sattler denies that he received the amended schedules, but mere denial of receipt, even in an affidavit, may not outweigh the certificate stating that the documents were mailed as stated. In re Cossio, 163 B.R. 150, 154-55 (Bankr. 9th Cir. 1994), aff'd, 56 F.3d 70 (9th Cir. 1995); see also In re Ricketts, 80 B.R. 495, 497 (Bankr. 9th Cir. 1987) (Jones, J., concurring). Further, the prima facie evidence provided by a certificate of service can be overcome only by "'strong and convincing evidence.'" Cossio, 163 B.R. at 155, quoting In re Betts, 142 B.R. 819, 824 (Bankr. N.D. Ill. 1992). Mr. Sattler presents no evidence of non-receipt other than his denial of receipt. Mr. Sattler has not overcome the presumption that he had notice of the bankruptcy case.

Mr. Sattler argues that Ms. Hicks' alleged failure to disclose an asset – her claims

against him – should deprive her of the discharge of her debts to him. This argument fails because Ms. Hicks did adequately and timely disclose those claims and, even if she had not done so, the nondisclosure of an asset (as opposed to the nondisclosure of a liability) has no bearing on the analysis under section 523(a)(3).

Mr. Sattler also relies heavily on In re Ford, 159 B.R. 590 (Bankr. D. Or. 1993), in which the court held that, where the debtor deliberately failed to notify a creditor of the debtor's bankruptcy filing, the discharge of the creditor's claim would violate the creditor's constitutional right to due process. Ford is inapplicable because Ms. Hicks did timely schedule both Mr. Sattler's Judgment against her and her claims against him and did notify Mr. Sattler of the bankruptcy filing.

2. Abandonment of Claims

When a debtor files a bankruptcy petition, virtually all of the debtor's property rights, including legal claims against others, becomes part of the bankruptcy estate. 11 U.S.C. § 541; Sierra Switchboard Co. v. Westinghouse Electric Corp., 789 F.2d 705 (9th Cir. 1986). When the court closes the bankruptcy case, any property which the debtor scheduled under 11 U.S.C. § 521(1) and which the trustee did not administer is automatically abandoned, meaning that it again becomes the property of the debtor. 11 U.S.C. § 554(c). This "technical abandonment" occurs automatically upon closing, without notice or hearing. In re Adair, 253 B.R. 85, 88 (Bankr. 9th Cir. 2000); In re DeVore, 223 B.R. 193, 197 (Bankr. 9th Cir. 1998).

Mr. Sattler contends that the automatic abandonment of Ms. Hicks' claims against Mr. Sattler should not occur in this case because, according to Mr. Sattler, Ms. Hicks did not adequately disclose those claims. Here, as required by 11 U.S.C. § 521(1), Defendant listed the

counterclaim in an amended Schedule "B" with a current market value described as "Unknown," and in an amended Statement of Financial Affairs filed on May 20, 1997. As is noted above, Ms. Hicks had the right to amend as a matter of course until the case was closed. See Fed. R. Bankr. P. 1009(a). Further, although schedule "B" requires the debtor to provide a dollar value for all personal property, marking "Unknown" was acceptable. See Cusano v. Klein, 264 F.3d 936, 946 (9th Cir. 2001) (noting that there are some assets for which a value is unknown and a simple statement to that effect is sufficient). Thus, when the court issued the final decree on July 7, 1997, the claims against Mr. Sattler were abandoned to Ms. Hicks. [2]

3. Offset

As explained above, Mr. Sattler's Judgment against Ms. Hicks has been discharged under 11 U.S.C. § 727. Mr. Sattler's right to collect the Judgment is therefore dramatically limited – indeed, is almost entirely eliminated – under 11 U.S.C. § 524(a). Nevertheless, neither the discharge nor anything else in the Bankruptcy Code affects the right of a creditor to offset a pre-petition mutual debt which a creditor owes to a debtor against a pre-petition claim by the creditor against the debtor. 11 U.S.C. § 553(a); see also In re De Laurentiis Entertainment Group, Inc., 963 F.2d 1269 (9th Cir. 1992); In re Buckenmaier, 127 B.R. 233 (Bankr. 9th Cir. 1991).

Ms. Hicks acknowledges that any judgment which she recovers from Mr. Sattler should be reduced by the principal amount of the Judgment, although she does not concede that

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[2]Although the trustee may seek revocation of an abandonment under certain circumstances, id., the Trustee has not pursued, and apparently does not intend to pursue, such relief. See Transcript of Proceedings, December 12, 2001, at 6 (attached as Ex. "D" to Dias Declaration, filed February 14, 2002).

post-judgment interest or other charges may be offset. Defendant's Memorandum re: Offset, at 2, filed April 1, 2002. Mr. Sattler argues that the entire amount of the Judgment must be treated as an offset. It is sufficient for me to hold that nothing in the bankruptcy law affects Mr. Sattler's right to set off his Judgment against any judgment which Ms. Hicks may recover against him; the state court can decide whether and to what extent such a setoff is appropriate under state law.

CONCLUSION

In sum, there are no genuine issues of material fact and Ms. Hicks is entitled to judgment as a matter of law. Ms. Hicks is entitled to pursue the claims against Mr. Sattler because those claims have been abandoned to her. Mr. Sattler's Judgment against Ms. Hicks has been discharged under 11 U.S.C. § 727 and the enforcement of that judgment is limited as provided in 11 U.S.C. § 524(a). Neither the discharge nor any other provision of bankruptcy law limits the extent to which Mr. Sattler is entitled, under state law, to set off his Judgment against any judgment which Ms. Hicks may recover against him. Accordingly, the court will enter a judgment dismissing the complaint. Further, because the decision of these issues was the sole reason for reopening the bankruptcy case, the court will also close the bankruptcy case concurrently with the entry of judgment in this adversary proceeding.

DATED: Honolulu, Hawaii, MAY 16 2002.

Robert J. Faris
United States Bankruptcy Judge

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CERTIFICATION OF SERVICE
I HEREBY CERTIFY THAT THE ATTACHED ORDER/JUDGMENT WAS MAILED ON 9/17/02, TO THE ABOVE NAMED PARTIES IN INTEREST.

DEPUTY CLERK