

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

| | | |
|----------------------------|---|----------------------------------|
| In re |) | Case No. 02-01641 |
| |) | Chapter 7 |
| GEORGE EDWARD CAMBRA, SR., |) | |
| |) | |
| Debtor. |) | |
| <hr style="width: 100%;"/> |) | |
| |) | Adversary Proceeding No. 02-0049 |
| WILLIAM K. TAKAKI, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | |
| |) | |
| GEORGE EDWARD CAMBRA, SR., |) | |
| |) | |
| Defendant. |) | |
| <hr style="width: 100%;"/> |) | |

**MEMORANDUM DECISION ON
‘PLAINTIFFS’ MOTION FOR DIRECTIONS, RE: STATE COURT APPEAL’**

In this adversary proceeding, the plaintiffs seek a determination that the debt which the debtor owes to them is not dischargeable in bankruptcy by virtue of 11 U.S.C. § 523(a)(6). The plaintiffs have recovered a judgment on the debt in state court. The debtor has appealed that judgment. The Hawai’i Supreme Court has ordered the plaintiffs to file an answering brief.

Plaintiffs’ Motion for Directions, RE: State Court Appeal, filed on October 28, 2002, was heard on November 12, 2002.¹ The plaintiffs have filed this motion because the plaintiffs fear that further prosecution of the appeal could violate the automatic stay imposed by 11 U.S.C. § 362 and might result in the imposition of sanctions upon them.

¹ At the hearing, Leslie Fukumoto, Esq., appeared on behalf of plaintiffs. The debtor did not respond to the motion or appear at the hearing.

The plaintiffs allege that, in June 1991, the debtor and another person deliberately destroyed a specialized vehicle that the plaintiffs used in their business. After the debtor pled guilty to certain federal criminal charges arising out of this incident, the plaintiffs sued the debtor in state court for damages. The state court conducted a jury trial and entered a judgment on August 28, 2001, granting over \$5,000,000 of compensatory and punitive damages for intentional infliction of emotional distress. The debtor appealed from the judgment.

On April 30, 2002, while the appeal was pending, the debtor filed a petition for relief under chapter 7 of the Bankruptcy Code. On July 24, 2002, the plaintiffs commenced this adversary proceeding for a determination that the debtor's debt to them is not dischargeable pursuant to 11 U.S.C. § 523(a)(6).

On August 8, 2002, while this adversary proceeding was pending, this court entered a Discharge of Debtor pursuant to 11 U.S.C. § 727. The order states that the discharge does not apply to “[d]ebts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged.” (Emphasis added.)

In the meantime, the Hawai'i Supreme Court has concluded that the automatic stay no longer applies to the appeal² and has directed the plaintiffs to file their answering brief. The plaintiffs filed the pending motion because, as noted above, they are concerned that filing their answering brief could violate the automatic stay.

There is no doubt that the automatic stay applied to the state court proceedings, because it

²Under controlling Ninth Circuit precedent, this court has exclusive jurisdiction to determine whether the automatic stay applies to particular state court proceedings. Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074 (9th Cir. 2000). Therefore, I must consider the application of the automatic stay notwithstanding the Supreme Court's decision.

is a proceeding against the debtor, which was commenced before the debtor sought bankruptcy protection, and is intended to recover a pre-bankruptcy claim against the debtor. 11 U.S.C. § 362(a)(1). It does not matter that the case is on appeal and the debtor is the appellant. The automatic stay applies to appeals in proceedings in which the debtor was a defendant, even if the debtor is the appellant. Ingersoll-Rand Financial Corp. v. Miller Mining Co., 817 F.2d 1424, 1426-27 (9th Cir. 1987). The only question is whether the automatic stay has terminated.

11 U.S.C. § 362(c) provides that the automatic stay of an action, such as the plaintiffs' action against the debtor, "continues until the earliest of – (A) the time the case is closed; (B) the time the case is dismissed; or (C) if the case is a case under chapter 7 of this title concerning an individual . . . , the time a discharge is granted or denied." Although the automatic stay ends when the debtor receives a discharge, the discharge injunction under 11 U.S.C. § 524(a) replaces it.

Confusion arises because the bankruptcy court often issues the discharge before the court has decided any complaints that seek a determination of whether a particular debt is dischargeable under section 523. This situation occurs frequently because Fed. R. Bankr. P. 4004(c) provides that, unless certain conditions exist, "the court shall forthwith grant the discharge" upon "expiration of the time fixed for filing a complaint objecting to discharge" in its entirety under 11 U.S.C. § 727. The pendency of a complaint under section 523 for a determination of the dischargeability of a particular debt is not one of the reasons stated in rule 4004(c) to delay entry of the discharge. Because the court generally must issue the discharge when the time expires to file an objection to the debtor's discharge in its entirety under section 727, and the deadline for filing a complaint under section 727 is the same as the deadline for

filing a complaint for a determination of the dischargeability of particular debts under section 523, Fed R. Bankr. P. 4004(a), 4007(c), the court is usually required to issue the discharge before the court has decided any complaints under section 523.

A literal reading of section 362(c)(2)(C) would suggest that, when the court issues the discharge, the automatic stay ends with respect to all claims, including those which are the subject of an unadjudicated complaint under section 523. This interpretation would create an anomalous situation. When the automatic stay ends, the discharge injunction begins. The discharge injunction only protects the debtor against debts that have been discharged. When the court issues the discharge, the court usually will not have decided any section 523 complaints and therefore will not have decided whether the debts which are the subject of those complaints will be discharged. Thus, the literal reading of section 362(c)(2)(C) implies that, during the period from the issuance of the discharge to the adjudication of the section 523 complaint, neither the automatic stay nor the discharge injunction protects the debtor against collection activities by the creditor who has filed a section 523 complaint.

The solution lies in the fact that a debt which is the subject of a section 523 complaint is not discharged until the court rules in the debtor's favor in the section 523 adversary proceeding.

The proper conclusion is that a debt . . . is not discharged until after the trial in the chapter 7 proceeding when the bankruptcy court holds the debt to be dischargeable. It is at this time when . . . the discharge injunction becomes effective

In re Redburn, 193 B.R. 249, 261 (Bankr. W.D. Mich. 1996). Because the debt which is the subject of the section 523 complaint is not discharged until the conclusion of the section 523 proceeding, the automatic stay continues in effect with respect to that debt until the bankruptcy court enters a judgment in that proceeding.

Thus, the automatic stay still applies to the appellate proceedings in the state court and will continue to apply until this court enters a final judgment in this adversary proceeding.³

DATED: Honolulu, Hawaii, _____.

Robert J. Faris
United States Bankruptcy Judge

³ On November 12, 2002, I orally granted the plaintiffs' motion for a default judgment determining that the debtor's debt to the plaintiffs for intentional infliction of emotional distress is not dischargeable in bankruptcy. A final judgment will be entered shortly.