

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	
	§	
JOHN CECIL DUNCAN,	§	CASE NO. 02-46291
	§	(Chapter 7)
Debtor.	§	

**MEMORANDUM OPINION AND ORDER
DENYING MOTION TO ENTER DISCHARGE ORDER**

John Cecil Duncan (the “Debtor”) initiated this case by filing a petition for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) on December 4, 2002 (the “Petition Date”). The Cadle Company (“Cadle”) filed a timely complaint objecting to the Debtor’s discharge under §727(a)(2)(A), (a)(3) and (a)(4) of the Bankruptcy Code. The Court tried Cadle’s complaint on October 4, 2004. On March 31, 2006, Court entered its “Memorandum Opinion” and its separate “Judgment” denying Cadle’s objections to the Debtor’s discharge. Cadle appealed the Court’s decision, and the appeal remains pending.

This matter is before the Court on the Debtor’s “Motion to Enter Discharge Order” [Dkt. No. 154] filed on April 17, 2007.¹ In the motion, the Debtor asserts that, because the Court’s Judgment denying Cadle’s objection to his discharge has not been stayed, he is entitled to his discharge under §727 of the Bankruptcy Code. The Debtor’s two-page motion does not cite any authority for the relief he requests.

¹ “The procedural posture of this dispute is awkward at best. Nothing in the Bankruptcy Code or Rules authorizes a motion for issuance of a discharge.” *In re Bergeron*, 235 B.R. 641, 642 fn 1 (Bankr. N.D. Cal. 1999) (treating a motion for entry of the discharge as an opposition to a pending motion to dismiss the bankruptcy case).

Federal Rule of Bankruptcy Procedure 4004 determines when a bankruptcy court may grant a discharge under §727 of the Bankruptcy Code. If none of the conditions listed in Rule 4004(c) are present, then the Court must grant the discharge “forthwith.” FED. R. BANKR. P. 4004(c). The entry of an order of discharge triggers the statutory injunction of §524(a) of the Bankruptcy Code and discharges all dischargeable debts. *See* 11 U.S.C. §727(b).

One of the conditions listed in Rule 4004(c) which precludes the Court from entering a discharge order is the filing of a complaint objecting to the debtor’s discharge. The filing of such a complaint initiates an adversary proceeding associated with the main bankruptcy case. *See* FED. R. BANKR. P. 4004(a) and (d). If a debtor successfully obtains a judgment in the adversary proceeding denying all objections to the entry of the discharge order, as in the present case, then the Court should “promptly” enter an order of discharge in the debtor’s main bankruptcy case. *See* 9-4004 COLLIER ON BANKRUPTCY §4004.04[3] (15th ed. rev. 1997); FED. R. BANKR. P. 7062.

In this case, however, Cadle has appealed the Court’s Judgment denying its objections to the Debtor’s discharge. The filing of the appeal divested this Court of “its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *see also In re Transtexas Gas Corp.*, 303 F.3d 571, 578-79 (5th Cir. 2002) (stating that the *Griggs* rule “applies with equal force to bankruptcy cases.”). Although the Court retains jurisdiction to administer the Debtor’s bankruptcy case, the Court “may not finally adjudicate substantial rights directly involved in the appeal.” *Newton v. Consolidated Gas Co.*, 258 U.S. 165, 177 (1922); *Hawaii Housing Authority v. Midkiff*, 104 463 U.S. 1323, 1324, (citing *Newton* with

approval). Entering a discharge order would do just that – the entry of the discharge order would amount to an attempt to finally adjudicate matters directly involved in Cadle’s pending appeal. See *In re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000); *In re Sherman*, 441 F.3d 794, 811 (9th Cir. 2006); *In re Conley*, --- B.R. ----, 2007 WL 1469666 fn 3 (1st Cir. BAP 2007). Moreover, it is immaterial that Cadle failed to seek a stay pending appeal since “a stay is necessary only to halt actions that a court is empowered to take.” *In re Padilla*, 222 F.3d at 1190.

IT IS THEREFORE ORDERED that the Debtor’s “Motion to Enter Discharge Order” [Dkt. No. 154] shall be, and it is hereby, **DENIED**.

Signed on 6/19/2007

Brenda T. Rhoades SR
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE