EOD
03/26/2014

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	
	§	
LARRY GENE MCLENDON,	§	Case No. 11-41527
	§	(Chapter 11)
Debtor.	§	
	§	
	§	
LARRY GENE MCLENDON,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. Proc. No. 13-4057
	§	
BOBBY SPRINGFIELD,	§	
	§	
Defendant.	§	

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

The debtor, Larry Gene McClendon, brought this proceeding seeking a declaratory judgment that his confirmed chapter 11 plan permanently enjoins the defendant, Bobby Springfield, from collecting his nondischargeable judgment, among other things. The proceeding is before the Court on a motion for summary judgment by McClendon. Springfield opposes the motion.

SUMMARY JUDGMENT STANDARD

The party seeking summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories, and affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The manner in which this showing can be made

depends upon which party will bear the burden of persuasion at trial. Here, since McClendon has the burden of establishing an entitlement to a declaratory judgment, he must support his motion with credible evidence that would entitle him to a directed verdict if not controverted at trial. *Celotex*, 477 U.S. at 331; *Grogan v. Garner*, 498 U.S. 279, 286 (1991).

BACKGROUND

The relevant facts are not in dispute. Prior to bankruptcy, a jury found McClendon liable to Springfield. McClendon filed a chapter 11 bankruptcy petition on May 11, 2011. After this Court granted relief from the automatic stay, the state district court entered a judgment in favor of Springfield and against McClendon in the amount of $341,000 with pre-judgment and post-judgment interest.

Springfield filed an adversary proceeding seeking a declaration that his judgment was not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(6). He also filed a proof of claim in McClendon's bankruptcy case. McClendon objected to the claim. On May 22, 2012, the bankruptcy court entered an order allowing McClendon an unsecured claim in the amount of $341,000 "without prejudice to the parties' claims in the pending adversary proceeding for non-dischargability of this debt."

The bankruptcy court conducted a trial on the adversary proceeding on January 15, 2013. On March 21, 2013, the bankruptcy court issued findings of fact and conclusions of law determining that the judgment was not dischargeable through bankruptcy. The district court upheld the bankruptcy court's decision on appeal.

In the meantime, McClendon filed and sought confirmation of a chapter 11 plan. He projected that he owed more than $3.5 million in unsecured debt. He proposed to pay the total amount of $60,000 to all creditors holding allowed, unsecured claims over 60 months. The bankruptcy court entered an order confirming McClendon's plan, as amended, on January 30, 2012.

The confirmed plan contained the following provisions that are relevant to McClendon's motion for summary judgment.

> **9.01. Discharge and Release of Debtor.** Pursuant to Bankruptcy Code Section 1141(d)(2), confirmation of this Plan does not discharge the Debtor because he is an individual. After completion of plan payments to the unsecured creditors, the Debtor may reopen the case to apply for a discharge. See 11 U.S.C. Section 1141(5).
>
> **9.03. Legal Binding Effect**. The provisions of this Plan, pursuant to the Bankruptcy Code Section 1141 shall bind the Debtor and all Creditors, whether or not they accept this Plan…..
>
> **9.04. Permanent Injunction**. [C]onfirmation of the Plan shall result in the issuance of a permanent injunction against the commencement or continuation of any judicial, administrative, or other action or proceeding on against of any Claims against the Debtor …. From and after the Confirmation Date, all holders of Claims against the Debtor … are restrained and enjoined (a) from commencing or continuing in any manner, any action or other proceeding of any kind with respect to any such Claim against the Debtor … (b) from enforcing, attaching, collecting, or recovering by any manner or means, any judgment, award, decree or order against the Assets or the Debtor …. Such restraint shall continue until the Debtor has been granted a discharge by the Court or such creditor is paid in full as called for by the Plan.

McClendon argued in the appeal of the judgment of nondischargeability that Section 9.04 of the plan permanently enjoined Springfield from seeking a nondischargeble judgment. The district court rejected this argument. The district

court specifically found that "Springfield was not enjoined from commencing the adversary proceeding seeking a declaration of nondischargeability." In the present motion for summary judgment, McClendon is asserting a variation of this argument, namely, that Section 9.04 of the plan permanently enjoins Springfield from seeking to collect the judgment even though it is not dischargeable through bankruptcy.

On December 12, 2012, McClendon requested that the bankruptcy court enter a final decree and close his bankruptcy case. McClendon stated in the motion that his plan had been substantially consummated and that he sought to close the case and have a final decree entered to avoid any further cost or expense of administration. He further stated that the case closing would be subject to reopening when he completed payments so that he could obtain a discharge. The bankruptcy court entered an order granting his motion and closing his case on January 2, 2013.

DISCUSSION

In his motion for summary judgment, McClendon asserts that he is not seeking a determination that his debt to Springfield has been "discharged" by the confirmed plan. Rather, McClendon seeks a summary judgment that the confirmed plan plainly and permanently "enjoins" Springfield from ever seeking to collect his nondischargeable judgment.[1] He also seeks damages from Springfield in at least the amount of $5,850 for his attorneys' fees and costs as well as an order of contempt against Springfield based on Springfield's attempts, to date, to collect his judgment.

[1] McClendon's argument is nonsensical. As discussed below, the bankruptcy discharge is a statutory injunction.

Courts regularly apply principles of contract interpretation to clarify the meaning of the language in reorganization plans. *See, e.g., Advisory Comm. Of Major Funding Corp. v. Sommers (In re Advisory Comm. of Major Funding Corp.)*, 109 F.3d 219, 222 (5th Cir. 1997). The unambiguous terms of an order are given their plain meaning. *In re Endeavor Highrise, L.P.,* 432 B.R. 583, 638 (Bankr. S.D. Tex. 2010) ("[W]hen a contract is 'so worded that it can be given certain or definite legal meaning or interpretation,' it is not ambiguous and must be construed according to its plain meaning as a matter of law.") (Internal citation omitted.)). When a contract contains an ambiguity, however, granting a motion for summary judgment is improper because interpretation of the instrument becomes a fact issue. *Coker,* 650 S.W.2d at 394; *Harris v. Rowe,* 593 S.W.2d 303, 306 (Tex. 1979).

Before discussing the merits of the parties' arguments, it will be useful to outline statutory provisions that govern events in this case. A debtor who has filed for chapter 11 bankruptcy enjoys an automatic stay against actions to enforce, collect, assess or recover claims against the debtor or against property of the estate. 11 U.S.C. § 362(a). Section 362(c)(2) provides that the stay of any other act continues until the earliest of (A) the time the case is closed, (B) the time the case is dismissed, or (C) the time a discharge is granted.

In 2005, Congress amended § 1141 of the Code so that, for individual debtors, "unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan." 11 U.S.C. § 1141(d)(5).

Pursuant to § 524 of the Code, a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). Significantly, the discharge injunction "prohibits collection only with respect to dischargeable debts and does not apply to nondischargeable debts." *United States v. White,* 466 F.3d 1241, 1246 (11th Cir. 2006). Thus, under § 1141(d)(2), an individual debtor in a chapter 11 case does not receive a discharge of any debt found nondischargeable under § 523.

Here, the automatic stay terminated when McClendon closed his bankruptcy case. McClendon's confirmed plan, however, broadly enjoined collection activities pending his discharge or a creditor's payment in full under the plan. The so-called "permanent injunction" in his plan thereby provided a bridge between the termination of the stay that resulted from the closing of the bankruptcy case to the discharge injunction the debtor would receive upon the entry of a discharge order.

McClendon's argument that Section 9.04 of his plan permanently enjoins creditors such as Springfield from ever collecting a nondischargeable judgment is not supported by its plain language. The so-called "permanent injunction" is expressly limited. The last sentence of Section 9.04 provides that the injunction is not, in fact, permanent but will end upon the entry of a discharge order or the payment of a creditor's allowed claim in full.[2]

[2] An order of discharge would release McClendon from liability for those debts dischargeable by McClendon in bankruptcy.

McClendon's argument is also not supported by basic principles of contract interpretation. His argument essentially renders Section 9.01 of his plan a nullity. It is a fundamental axiom of contract interpretation that "[a]n interpretation that gives a reasonable meaning to all provisions is preferable to one that leaves a portion of the [contract] useless, inexplicable, or creates surplusage." *Lyons v. State Farm Lloyds and Nat. Cas. Co.,* 41 S.W.3d 201, 206 (Tex. App. – Houston [14th Dist.], 2001). Furthermore, Section 9.01 of McClendon's plan, which addresses the procedure for obtaining a discharge and release, is more specific as to these issues than the broad language contained within the "permanent injunction" in Section 9.04. A specific contractual provision prevails over a general provision. *E.g., Baton Rouge Oil & Chem. Workers Union v. ExxonMobil Corp.,* 289 F.3d 373, 377 (5th Cir. 2002).

More generally, the Code does not authorize a discharge upon the entry of a confirmation order in an individual chapter 11 case. McClendon's interpretation of Section 9.04 of his plan would undermine § 1141(d)(5) and its requirements for obtaining a discharge by effectively granting McClendon a discharge through his plan. In addition, a truly permanent injunction against a creditor's efforts to collect a nondischargeable debt would be inconsistent with § 1141(d)(2), which expressly provides that "a discharge … does not discharge a debtor who is an individual from any debt excepted from discharge under section 523" of the Code.

This Court, therefore, finds and concludes that McClendon has failed to establish that the unambiguous terms of the confirmed plan entitle him to a summary judgment declaring that his plan permanently enjoins Springfield from ever seeking to

collect his nondischargeable judgment from McClendon. McClendon has likewise failed to establish that he is entitled to his attorneys' fees or a judgment of contempt against Springfield as a matter of law. It is therefore

ORDERED that McClendon's Motion for Summary Judgment is **DENIED.**

Signed on 3/26/2014

Brenda T. Rhoades MD

HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE