

UNITED STATES BANKRUPTCY COURT **FEB 23 2007**  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

IN THE MATTER OF:	:	CASE NUMBER: A03-94405-PWB
	:	
ARTHUR GHEE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
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ARTHUR GHEE,	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 06-9105
RETAILERS NATIONAL BANK,	:	
TARGET VISA	:	
(DOUGLAS SCOVANNER)	:	
CHRISTIE COMES, ATTORNEY	:	
CRAIG R. GOODMAN, ATTORNEY	:	
RUTHANNE W. GOODMAN,	:	
JUDGE JOHNNY PANOS,	:	
	:	
Defendants.	:	

**ORDER**

On August 8, 2003, the Debtor received a chapter 7 discharge in the above-referenced bankruptcy case. Included in the discharged debts was the Debtor's obligation to Retailers National Bank ("Retailers") for credit card charges incurred on a credit card account for the retailer, Target. In 2005, Retailers, through its counsel Craig R. Goodman and Ruthanne W. Goodman, commenced an action against the Debtor's spouse, Dedra Ghee, an alleged co-obligor on the account, to recover the balance owed on the account in the State Court of DeKalb County, Georgia. This action, *Target National Bank f/k/a Retailers National Bank-Target Visa v. Dedra Ghee*, Civil Action No. 05A-33748-4, was assigned to the Hon. Johnny Panos in DeKalb County State Court. During the course of the state court litigation, the Debtor was denied the right to intervene as a party in the action. On

January 9, 2006, the State Court entered judgment in favor of Retailers and against Dedra Ghee in the amount of \$10,811.55.

The Debtor contends that his spouse was not jointly liable on the debt to Retailers and, as a result, there is no legal basis for the judgment obtained against her. In this adversary proceeding, the Debtor contends that Retailers, Douglas Scovanner (an officer of Retailers), Christy Comes (an officer for Target Financial Services, Inc.), Craig Goodman, Ruthanne Goodman, and Judge Panos conspired to commit fraud, extortion, mail and wire fraud, and violate the discharge injunction and automatic stay in violation of 11 U.S.C. § 524, 11 U.S.C. § 362, 18 U.S.C. § 1961, and 18 U.S.C. § 1962. In the prayer for relief in the Complaint, the Debtor requests that the State Court judgment be set aside pursuant to Rule 60(b)(3) of the Federal Rules of Civil Procedure as one procured by fraud.

The Defendants have each filed motions to dismiss, alleging that the complaint should be dismissed pursuant to FED. R. CIV. P. 12(b)(1) based upon lack of subject matter jurisdiction and FED. R. CIV. P. 12(b)(6), based on failure to state a claim, made applicable to these proceedings by FED. R. BANKR. P. 7012(b). In addition, Judge Panos seeks dismissal on the grounds of judicial immunity. The Debtor has filed (1) a motion to strike the Goodmans' motion to dismiss; (2) motions for entry of default judgment against the Defendants; and (3) a request for hearing on the motions for default judgment. In addition, Dedra Ghee has filed a motion to intervene in this proceeding pursuant to FED. R. CIV. P. 24, made applicable by FED. R. BANKR. P. 7024. The Court will address (1) the Debtor's motion to strike the Goodman's motion to dismiss; (2) the motions to dismiss and the jurisdictional issues raised therein; and (3) the remaining motions.

The Debtor's Motion to Strike the Goodman's Motion to Dismiss

The Goodmans timely filed an answer on January 4, 2007, to the Debtor's complaint in which, *inter alia*, they stated that the Debtor's complaint "fails to state a claim upon which relief can

be granted” and, in their prayer for relief, requested that the action be dismissed with prejudice. (Goodmans’ Answer at ¶ 1). By separate motion filed January 11, 2007, the Goodmans requested that the action be dismissed for failure to state a claim upon which relief can be granted and for lack of subject matter jurisdiction. The Debtor requests that the Court strike the Goodmans’ motion to dismiss on the basis that it was untimely filed. It appears that the Debtor seeks dismissal on the basis that if the Goodmans filed an answer to the complaint on January 4, 2007, their subsequent motion to dismiss is barred by FED. R. CIV. P. 12(b), made applicable by FED. R. BANKR. P. 7012(b).

Federal Rule 12(b) provides that

Every defense, in law or fact, to a claim for relief in any pleadings, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted.

The Court concludes that the Goodmans sufficiently raised a basis for dismissal under Rule 12(b)(6) in their answer and that the subsequent January 11, 2007 motion is merely a reiteration of their request for dismissal on that basis. Although the Goodmans did not specifically assert lack of subject matter jurisdiction in their answer, this is not fatal inasmuch as a lack of subject matter jurisdiction cannot be waived. *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (“[N]o action of the parties can confer subject-matter jurisdiction upon a federal court. Thus the consent of the parties is irrelevant, principles of estoppel do not apply,

and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings.”) Thus, to the extent that the Goodmans’ motion to dismiss asserts a lack of subject matter jurisdiction as a basis for dismissal, the Court construes their motion as a motion for judgment on the pleadings pursuant to FED. R. CIV. P. 12(c), made applicable by FED. R. BANKR. P. 7012(b). Accordingly, the Debtor’s motion to strike the Goodmans’ motion to dismiss is denied.

#### Motions to Dismiss

The Defendants have each filed motions to dismiss, alleging that the complaint should be dismissed pursuant to FED. R. CIV. P. 12(b)(1) based upon lack of subject matter jurisdiction and FED. R. CIV. P. 12(b)(6), based on failure to state a claim, made applicable to these proceedings by FED. R. BANKR. P. 7012(b).

A bankruptcy court’s jurisdiction is limited. A bankruptcy court in a judicial district is a “unit of the district court” and consists of “the bankruptcy judges in regular active service.” 28 U.S.C. § 151. In statutory terms, the bankruptcy court has no jurisdiction of its own. Rather, 28 U.S.C. § 1334 vests bankruptcy jurisdiction in the district courts. Section 157(a) of Title 28 then permits a district court to refer any or all bankruptcy cases and any or all proceedings arising under the Bankruptcy Code or arising in or related to a bankruptcy case to “the bankruptcy judges for the district.” Section 151 authorizes a bankruptcy judge, “as a judicial officer of the district court,” to exercise “the authority conferred under [28 U.S.C. §§ 151-58] with respect to any action, suit, or proceeding” thus referred. The District Court by local rule has referred all cases and proceedings within the scope of § 157(a) to this District’s bankruptcy judges. LR 83.7, NDGa.

Comparison of the language of § 1334 that vests jurisdiction in the district courts with the language of § 157(a) that authorizes referral of bankruptcy matters to the bankruptcy judges shows that the two sections are coextensive. These two provisions, then, operate to permit the referral of all matters over which a district court has bankruptcy jurisdiction under § 1334 to the bankruptcy

judges.

How a bankruptcy judge handles a referred matter is governed by subsections (b) and (c) of § 157. Section 157(b) authorizes bankruptcy judges to hear and determine all cases under title 11, “core proceedings” arising under title 11, or arising in a case under title 11, and enter “appropriate orders and judgments.” Under § 157(c), a bankruptcy judge may hear a “non-core proceeding” that “is otherwise related to a [bankruptcy] case,” but any final order or judgment must be entered by the district court after it considers the bankruptcy judge’s proposed findings of fact and conclusions of law de novo. “Core proceedings” are defined in § 157(b)(2); “non-core proceedings,” simply enough, are those that are not “core.”

The Debtor contends that the Defendants have violated a number of federal statutes and, it appears, is also attempting to collaterally attack the validity of a state court judgment. The only core proceeding over which this Court has jurisdiction, however, is the alleged violation of the discharge injunction. 28 U.S.C. § 157(b)(2)(O). Section 524 of the Bankruptcy Code provides that a bankruptcy 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 such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.

There is no dispute that the Debtor’s obligation to Retailers was discharged in his chapter 7 bankruptcy case. There is also no dispute that the Debtor has not been sued post-discharge by Retailers to recover the discharged debt. Finally, Dedra Ghee was not a party to the bankruptcy case and not subject to the discharge order. Based on the foregoing, the Debtor has failed to set forth a factual or legal basis for any alleged violation of the discharge injunction by any of the Defendants. As such, the Court concludes that, to the extent the Debtor has alleged a violation of the discharge

injunction, the Debtor has failed to state a claim upon which relief may be granted.

At the heart of the Debtor's complaint is the allegation that the Defendants conspired to create fraudulent documents and make false statements to create liability for his spouse, Dedrea Ghee, on a debt which, he contends, she is not obligated. Regardless of whether any portion of this statement is true, it is not a matter for this bankruptcy court to determine. Such allegations do not constitute a case under Title 11, a core proceeding arising under Title 11, nor do they arise in a case under Title 11. Moreover, this matter is not "related to" the Debtor's closed bankruptcy case for purposes of 28 U.S.C. § 157(c). Whether Dedra Ghee is personally liable to Retailers is not a bankruptcy issue at all. Retailers sued Ms. Ghee in DeKalb County State Court and this was and is the forum to raise any challenges to liability or appellate challenges to the factual and legal findings of the State Court. The Debtor, who was not a party to the State Court action, may not collaterally attack the resulting judgment, for which he has no personal liability, in a bankruptcy court. Further, Rule 60(b)(3) does not permit this Bankruptcy Court to set aside the duly entered judgment of a state court. The proper avenue for contesting the validity of a state court judgment is the appeals process of the state courts. Because the Court lacks subject matter jurisdiction over what is essentially a dispute between the non-debtor Dedra Ghee and the various non-debtor Defendants, dismissal of this action is appropriate.

In addition, the Court concludes with respect specifically to Judge Panos' motion to dismiss, that the Debtor has failed to state a claim upon which relief may be granted. It is unclear from the Debtor's complaint what type of relief he seeks against Judge Panos. The doctrine of judicial immunity protects a judge from monetary liability "for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Wahl v. McIver*, 773 F.2d 1169, 1172 (11<sup>th</sup> Cir. 1985) (quoting *Bradley v. Fisher*, 80 U.S. 335, 351 (1871)). In his response to Judge Panos' motion to dismiss, the Debtor contends that he is not seeking

monetary damages against Judge Panos, but instead is seeking “injunctive relief,” namely that orders entered by Judge Panos in the state court action, to which the Debtor was not a party, be set aside based upon a conspiracy among the parties in the state court action to commit fraud. The Court concludes that the Debtor is not in fact seeking injunctive relief, but is in actuality collaterally attacking Judge Panos’ orders, entered in his official capacity in a case over which he was presiding. As stated *supra*, the Debtor, who was not a party to the state court action, may not seek reconsideration of these orders in the Bankruptcy Court. For that reason, in addition to the other reasons set forth in this Order, the Court concludes that the Debtor has failed to state a claim for relief against Judge Panos.

#### Motions for Default Judgment

Because the Court lacks subject matter jurisdiction over this action, there is no basis for entry of default judgment against any of the defendants. Accordingly, the Debtor’s motions for default judgment and motion to set hearing on the motions for default judgment are denied.

#### Motion to Intervene

Pursuant to FED. R. CIV. P 24, made applicable by FED. R. BANKR. P. 7024, Dedra Ghee seeks to intervene in this proceeding “because her interests (credit report) cannot be adequately represented by [the Debtor], which is the property of Dedra Ghee proposed intervener” and “to protect her reputation and defend herself from false charges made in declaration of Ms. Susan Wolf” (Application for Intervention at 3, February 2, 2006). There is no basis for permitting a party to intervene in an action over which this Court lacks subject matter jurisdiction. Thus, the application to intervene is denied.

#### Conclusion

In conclusion, the Court holds that dismissal of this action is appropriate because the Debtor has failed to state a claim for which relief can be granted. The Debtor has failed to set forth

a factual or legal basis for any alleged violation of the discharge injunction by any of the Defendants. Further, the Court lacks subject matter jurisdiction over what is essentially a dispute between the non-debtor Dedra Ghee and the various non-debtor Defendants. Therefore, it is

ORDERED that the Debtor's motion to strike (Doc. No. 30) the Goodmans' motion to dismiss is DENIED; it is

FURTHER ORDERED that the requests for entry of default and motions for default judgment (Doc. Nos. 32 - 41) and motion to set hearing on motions for default judgment (Doc. No. 58) are DENIED; it is

FURTHER ORDERED that the application to intervene by Dedra Ghee (Doc. No. 51) is DENIED; it is

FURTHER ORDERED that the Defendants' motions to dismiss (Doc. No. 9, 11, 12, 19, 23) are GRANTED and this proceeding is DISMISSED.

The Clerk is directed to serve copies of this Order on the persons on the attached Distribution List.

At Atlanta, Georgia, this 23 day of February, 2007.



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PAUL W. BONAPFEL  
UNITED STATES BANKRUPTCY JUDGE

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