

ENTERED ON DOCKET
JAN 27 2005

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:	:	CASE NUMBER: A94-65503-PWB
	:	
DALE M. CARTER and	:	
ELIZABETH ANN CARTER,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtors.	:	BANKRUPTCY CODE
<hr/>		
	:	
DAMIAO X. PARRAS,	:	
	:	ADVERSARY PROCEEDING
Plaintiff	:	NO. 94-6388
	:	
v.	:	
	:	
DALE M. CARTER,	:	JUDGE BONAPFEL
	:	
Defendant.	:	

ORDER DENYING PLAINTIFF'S MOTIONS

Before the Court are numerous motions filed by Plaintiff related to his attempts to collect a nondischargeable debt. The Court previously entered an order reopening this case so that Plaintiff could conduct post-judgement discovery. Furthermore, in its November 9, 2004 Order, the Court suggested that Plaintiff could conduct post-judgment discovery in compliance with the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure and that Plaintiff could seek an Order to compel compliance under Rule 37 if a party failed to cooperate. The Court has reviewed the record in this case and now concludes, for the reasons stated herein, that Plaintiff has no basis for conducting post-judgment discovery in this Court. As a result, all the motions filed by Plaintiff are denied.

Rule 69 of the Federal Rules of Civil Procedure, made applicable by Rule 7069 of the Federal Rules of Bankruptcy Procedure, provides:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

The record in this case reflects that the judgment issued by this Court on March 16, 1995, declared

that the debt owed by Defendant-Debtor, Dale M. Carter, to Plaintiff, Damiao X. Parras, in the amount of \$11,105.30, plus court costs of \$123.00, arising out of the Order of Restitution entered by the Circuit Court, Fourteenth Judicial Circuit of the State of Florida, in and for Bay County on January 12, 1993 in Case No. 91-1825, is NONDISCHARGEABLE in bankruptcy as to Defendant-Debtor, Dale M. Carter, only.

Plaintiff's judgment in this adversary proceeding is not a "judgment for the payment of money" and no writ of execution has been issued; this Court's judgment only held the debt owed pursuant to the underlying Florida Order of Restitution was nondischargeable. Therefore, Rule 69 is inapplicable. Any issues related to collection of this nondischargeable debt, including post-judgment discovery, should be addressed through proceedings to enforce the Order of Restitution under appropriate nonbankruptcy law in an appropriate nonbankruptcy court. Whether the Order of Restitution is dormant is a matter of Florida law, and is not an issue for this Court to address. Based on the foregoing, it is

ORDERED AND ADJUDGED as follows:

Plaintiff's Discovery in Aid of Execution: Motion to Set-Aside Court Order Denying Plaintiff's Request for Court Orders to Third Parties (Doc. # 33) is **DENIED**;

Plaintiff's Motion to Compel Discovery (Doc. # 35) is **DENIED**;

Plaintiff's Motion for Ten Days Order to Compel Discovery (Doc. # 36) is **DENIED**;
Plaintiff's Motion for Order of Execution of Judgment to Third Party of James M. Strother (Doc. # 37) is **DENIED**;

Plaintiff's Motion for Order of Execution of Judgment to Third Party of Jack Hudson (Doc. # 38) is **DENIED**;

Plaintiff's Motion for Citation of Contempt (Doc. # 40) is **DENIED**;

Plaintiff's Request for Renewal or Revival of Judgment (Doc. # 43) is **DENIED**;

Plaintiff's Request for Order of Contempt Bench Warrant (Doc. # 44) is **DENIED**; and

Plaintiff's Motion for Renewal or Revival of the Judgment (Doc. # 50) is **DENIED**.

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

At Atlanta, Georgia, this 26 day of January, 2005.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

Damiao X Parras
6193 Rock Island Road #209
Fort Lauderdale, FL 33319

Dale M Carter
3588 Frey Lake Road
Kennesaw, GA 30144

Dale M. Carter
2293 Colleen Circle
Marietta, GA 30060

Alan I. Seitman
1820 The Exchange, Suite 150
Atlanta, GA 30339

Ellen F. Shepherd
Morris Schneider & Prior LLC
1587 Northeast Expressway
Atlanta, GA 30329

Jack Hudson
c/o Michael Weinstock
Weinstock & Scavo, P.C.
3405 Piedmont Road, N.E.
Atlanta, GA 30305

Sharon Lewonski
Weinstock & Scavo, P.C.
3405 Piedmont Road, N.E.
Atlanta, GA 30305