

FEB 15 2007UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 03-92191-JB
	:	
LEONARDO SCOTT BURTON	:	CHAPTER 13
	:	
Debtor.	:	JUDGE BIHARY

ORDER

The only remaining matter in this Chapter 13 case is a motion filed by the debtor's ex-wife Blanche Burton to find the debtor's former employer, Ford Motor Company ("Ford"), in contempt for alleged violations of the automatic stay or violations of employer deduction orders. This motion was the subject of the Court's Order entered on November 28, 2006, and will be referred to hereinafter as "Contempt Motion."

The disputes between Ms. Burton and the debtor's former employer have dominated the administration of this case. The debtor and Ms. Burton were divorced and entered into a settlement agreement in their divorce case in the Superior Court of Clayton County. This agreement was made a part of a final judgment and decree of divorce entered on January 23, 2002. The agreement contained a finding that Mr. Burton's gross annual income was \$75,000.00 and provided that in addition to monthly child support of \$1,583.00 that "[Mr. Burton] shall pay to [Ms. Burton] twenty-five (25) percent of his gross income, which includes any profit sharing or bonuses, over \$75,000.00 per year, as child support. This amount will be computed and paid quarterly." Mr. Burton filed this Chapter 13 case on February 27, 2003, and the Court entered employer deduction orders directing Ford to transmit certain funds from the debtor's pay to the

Chapter 13 Trustee. Conflicts arose between Ms. Burton and Ford principally resulting from Ms. Burton's expectations that Ford and the Chapter 13 Trustee were obligated to somehow implement the provision that Mr. Burton pay Ms. Burton twenty five (25) percent of his gross income over \$75,000.00 per year as child support.

Ms. Burton has filed a number of motions in this bankruptcy of her ex-husband, and the Court has held a number of hearings and entered several orders pertaining to Ms. Burton's claims against Mr. Burton for alimony and child support and to Ms. Burton's claims against Ford. See Orders entered on April 22, 2005, August 1, 2005, September 22, 2005, and May 22, 2006. The second paragraph of the Order entered on September 22, 2005 on Ford's motion for sanctions against Ms. Burton provided as follows:

2. Counsel for Ms. Burton stated at the hearing that he did not oppose the pre-filing requirement requested by Ford Motor Company in the motion for sanctions. Accordingly, the portion of Ford Motor Company's motion for sanctions seeking a pre-filing requirement for future filings by Ms. Burton is GRANTED. The Court hereby orders that Ms. Burton is prohibited from filing any document seeking affirmative relief against Ford Motor Company with the Clerk without first obtaining pre-approval from the Court that the filing is meritorious and advances legal issues appropriate for resolution in this Court. Further, Ford Motor Company is hereby relieved of any requirement to respond to any document filed by Ms. Burton with the Clerk until the Court has pre-approved the document for filing in accordance with this Order.

The Contempt Motion proffered by Ms. Burton on October 16, 2006 seeks affirmative relief against Ford and thus requires pre-approval under the terms of the September 22, 2005 Order before Ford is required to file a response.

On November 28, 2006, the Court required Ms. Burton to supplement her Contempt Motion with certain information before the Court would consider the motion further

and determine whether any responses should be required. Ms. Burton filed a supplemental response to her motion on January 5, 2007.

The debtor is no longer employed by Ford. In the status report filed by Ford on December 13, 2006, Ford stated that on November 28, 2006, the debtor had elected to terminate his employment with Ford and receive a \$100,000.00 severance payment, one of the options available to the debtor as a result of the closure of the Ford Motor Company facility in Hapeville, Georgia. Pursuant to the Court's Order of October 25, 2006, Ford transmitted \$10,488.23 to the Chapter 13 Trustee and distributed the balance of the severance payment, less taxes and other mandatory deductions, to the debtor. As the debtor is no longer employed by Ford, there are no future earnings for Ford to report or transmit to the Chapter 13 Trustee. On January 5, 2007, the Chapter 13 Trustee, Mary Ida Townson, filed a notice that the plan payments had been completed and that the debtor was entitled to receive a discharge in this Chapter 13 case. Accordingly, on January 10, 2007, the debtor was issued a discharge pursuant to 11 U.S.C. § 1328(a).

Ms. Burton has complained for some time that Ford did not comply with the employer deduction orders by transmitting a sufficient portion of the debtor's earnings to the Chapter 13 Trustee for administration. On November 22, 2004, Debtor, his counsel, Ms. Burton, her counsel at the time, Marilyn Bright, counsel for Ford, and the Standing Chapter 13 Trustee attended a settlement conference held in the Chapter 13 Trustee's offices to resolve any alleged violations of the employer deduction orders. The Chapter 13 Trustee recorded the conference and so advised the individuals present. That settlement conference culminated in a Settlement Agreement and Release signed on December 23, 2004, by Debtor, Ms. Burton, Ford, and their

counsel. Ms. Burton filed motions to reconsider and to set aside the settlement agreement and those were denied in Orders entered on April 22, 2005 and August 1, 2005.

In her Contempt Motion submitted on October 16, 2006, Ms. Burton seeks again to rescind the Settlement Agreement and Release entered on December 23, 2004. The facts set forth by Ms. Burton in her most recent motion with respect to what took place at that conference do not support a ruling or a determination that the settlement agreement should be or could be set aside. The parties signed the Settlement Agreement and Release on December 23, 2004 and all parties were represented counsel. Ms. Burton was represented by competent counsel, Marilyn Bright, at the meetings held on November 22, 2004 and December 17, 2004 at the Chapter 13 Trustee's office. The Settlement Agreement and Release was signed by Ms. Burton, Marilyn S. Bright, attorney for Ms. Burton, Ford Motor Company, by T.A. Devine, Counsel, Brian D. Burgoon, Attorney for Ford, Leonardo Scott Burton, Debtor, and Dwight R. Johnson, Attorney for the Debtor. The Settlement Agreement and Release also contained a merger clause stating that the agreement was the entire agreement between the parties. The merger clause provides as follows:

This Settlement Agreement and Release constitutes the entire and only understanding and agreement between the parties hereto with respect to the subject matter hereof and the terms herein are considered by the parties to be contractual in nature and not a mere recital. This Settlement Agreement and Release supersedes all prior and contemporaneous understandings, discussions or agreements.

(Settlement Agreement, ¶ 20). This provision is clear, and under Georgia law, it prohibits Ms. Burton from claiming that she relied upon any representations not contained in the Settlement Agreement and Release. *Worsham v. Provident Cos., Inc.*, 249 F. Supp. 2d 1325, 1331-32 (N.D.

Ga. 2002) (citations omitted); *Liberty v. Storage Trust Props. L.P.*, 267 Ga. App. 905, 910, 600 S.E.2d 841 (2004). Additionally, Ms. Burton's request to rescind the Settlement Agreement and Release has not been accompanied by a proper tender of the \$13,479.72 received by Ms. Burton from Ford through the Settlement Agreement and Release. *See* Order entered August 1, 2005.

Throughout this case, there has been confusion regarding a recording of the November 22, 2004 settlement conference that occurred at the office of James H. Bone, the former Chapter 13 Trustee. The settlement conference on November 22, 2004 was recorded by Mr. Bone. In a response filed July 8, 2005, Mr. Bone claimed that the recording was unavailable due to mechanical error. On May 12, 2006, Mr. Bone amended his response to state that an extended search of computer records had uncovered a copy of the recording. In an Order entered May 26, 2006, the Court ordered the Chapter 13 Trustee to provide Ms. Burton, counsel for Debtor, and counsel for Ford with a copy of the recording. The Court ordered the United States Trustee to become custodian of the recording, order a transcript of the recording, and provide Ms. Burton, counsel for Debtor, counsel for Ford, and James H. Bone with a copy of the transcript of the settlement conference. James H. Bone resigned as a Standing Chapter 13 Trustee, and on June 2, 2006, Mary Ida Townson was appointed as the Chapter 13 Trustee in this case.

The United States Trustee provided a transcript of the recording to the parties and filed two pleadings, dated December 1, 2006 (Docket No. 96) and December 21, 2006 (Docket No. 99), reporting on the transcription of the recording. The United States Trustee reports now that a true, complete, and correct transcript of the recording of the November 22, 2004 settlement conference has been provided to all parties. While the events surrounding Ms. Burton's efforts

to obtain a copy of the recording of the settlement conference have been less than satisfactory, the fact remains that Ms. Burton signed the Settlement Agreement and Release with a merger clause prohibiting her from relying on any representations not contained in the Settlement Agreement and Release. Ms. Burton has alleged no new facts regarding the settlement conference or the Settlement Agreement and Release to support rescinding the Settlement Agreement and Release, nor has she tendered the \$13,479.72 she received from Ford through the Settlement Agreement and Release. Accordingly, Ms. Burton's motion to rescind the Settlement Agreement and Release must be and is hereby denied.

Ms. Burton continues to allege that Ford is in contempt for its failure to pay certain amounts to the Chapter 13 Trustee under the employer deduction orders. The record is clear that Ms. Burton waived any claims against Ford for violations of employer deduction orders occurring prior to the Settlement Agreement and Release. As described above, the Settlement Agreement and Release contained a broad release by Ms. Burton in favor of Ford, and Ms. Burton waived any and all claims and causes of action which were or could have been asserted in this bankruptcy case, including any claims related to Ford's compliance with the employer deduction order. In fact, as a part of the Settlement Agreement and Release, Ms. Burton agreed to withdraw a previous motion she had filed against Ford, and on January 10, 2005, Ms. Burton filed a formal withdrawal of the motion which reads in pertinent part:

Such withdrawal is with prejudice for all acts up to the Settlement Agreement and Release among Creditor, Debtor, and Ford Motor Company. (emphasis added).

Thus, the allegations against Ford for its alleged failure to comply with the employer deduction order prior to December 23, 2004, the date of the Settlement Agreement and Release, cannot form the basis of this recent Contempt Motion.

Ms. Burton also contends that Ford failed to comply with the employer deduction orders after December 23, 2004, the date of the Settlement Agreement and Release. The February 15, 2005 amended employer deduction order directed Ford to deduct from debtor's pay and to remit \$230.77 per week to the Chapter 13 Trustee. The Order also provided that Ford should remit all bonuses due to the Debtor/Employee after regular taxes, FICA, Medicare and other mandatory deductions were deducted. Ms. Burton's January 5, 2007 supplemental response alleges that Ford failed to remit three bonuses to the Chapter 13 Trustee earned by the debtor after the date of the Settlement Agreement and Release and after the entry of the February 15, 2005 amended employer deduction order: a bonus of \$855.93 paid on March 6, 2005, a \$600.00 bonus paid in November 2005, and a \$600.00 bonus paid in November 2006. The bonuses in question total \$2055.93. Ford is directed to respond to the allegations that it failed to remit the three bonuses to the Chapter 13 Trustee.

Ms. Burton also alleges that Ford violated the automatic stay and the employer deduction orders by deducting certain amounts from debtor's earnings. Again, in the Settlement Agreement and Release, Ms. Burton waived any claims against Ford relating to Ford's deductions from debtor's earnings prior to parties entering into the December 23, 2004 Settlement Agreement and Release. However, in her January 5, 2007 supplemental response, Ms. Burton alleges that Ford improperly took certain deductions from Mr. Burton's pay after the date of the Settlement Agreement and Release. Ford is directed to respond only to those

allegations regarding deductions taken after the parties entered into the Settlement Agreement and Release on December 23, 2004. The deductions in questions total \$750.49. Specifically, Ford should explain the deductions identified by Ms. Burton in the following amounts:

- 1) \$68.80 on January 2, 2005,
- 2) \$214.59 on January 9, 2005
- 3) \$133.68 on January 16, 2005,
- 4) \$194.36 on January 23, 2005
- 5) \$69.53 on January 30, 2005, and
- 6) \$69.53 on February 6, 2005.

Ms. Burton also alleges that Ford gave the Chapter 13 Trustee inaccurate earnings statements. In her January 5, 2007 supplemental response, she lists inaccuracies in a chart summarizing earnings and deductions reflected in Exhibit 1 to Ford's supplement to its response to Blanche Burton's motion to compel compliance with Bankruptcy Court Orders (Docket No. 27), the earnings of the debtor as reflected on "Ford pay details," and the earnings as reflected on "STARS/Child Support Enforcement Payment Detail." However, all the alleged inaccuracies in this chart appear to relate to events in 2003. In the Settlement Agreement and Release, Ms. Burton waived claims against Ford for any alleged violations of Court Orders or the automatic stay that occurred prior to the date of the Settlement Agreement and Release.

Finally, Ms. Burton requests that the Court subpoena nine people on her behalf, including two of Ms. Burton's former attorneys, Marilyn Bright and Stanley Kakol, the debtor Leonardo Burton, the former Chapter 13 trustee James Bone, a former assistant of the former Chapter 13 trustee Sarah Camp, two former attorneys of the Chapter 13 trustee, Melissa Carperos and Lisa Richey Craig, a Ford Motor Company attorney, Ron Levine, who has not appeared in this case, and Mr. Burton's attorney Dwight Johnson. The record does not justify this request.

Ms. Burton is free to speak with her former lawyers, her former husband, his attorney, and various attorneys with the Chapter 13 Trustee's office, but the Court cannot and will not order these nine individuals to appear in Court to testify in support of Ms. Burton's recent motion.

Ms. Burton has had an attorney represent her in this case and in her own Chapter 13 case, but she filed the instant motion *pro se*. The Court has repeatedly explained to Ms. Burton that her disputes with her ex-husband over unpaid child support are disputes that belong in the Superior Court of Clayton County, not in the Bankruptcy Court. The record indicates that Ms. Burton has received substantial payments from the Chapter 13 Trustee and Ford and that her claims in the bankruptcy case have been paid. The Court lifted the automatic stay as to Ms. Burton's claims for child support and alimony accruing after December 22, 2004 in an Order dated April 22, 2005. If Ms. Burton contends that any child support and alimony has not been paid in full, she is free to return to the Superior Court of Clayton County to assert those claims. But the Chapter 13 Trustee has reported that payments under the confirmed chapter 13 plan have been completed, the Court has entered an Order discharging the debtor, and this bankruptcy case should be at an end.

In order to be certain that any outstanding questions are answered, Ford is directed to respond only to the following allegations in Ms. Burton's motion and supplement.

1. The allegations that Ford violated the February 15, 2005 employer deduction order by failing to remit payment of three bonuses to the trustee, a bonus of \$855.93 paid on March 6, 2005, a \$600.00 bonus paid in November 2005, and a \$600.00 bonus paid in November 2006.
2. The allegations that Ford violated the employer deduction orders by deducting the following amounts: \$68.80 on January 2, 2005, \$214.59 on January 9, 2005, \$133.68 on January 16, 2005, \$194.36 on January 23, 2005, \$69.53 on January 30, 2005, and \$69.53 on February 6, 2005.

Ford's limited response should be filed on or before March 6, 2007. Additionally, if the Chapter 13 Trustee has information relevant to the allegations against Ford described in paragraphs 1 and 2 above, it would be helpful if the Chapter 13 Trustee could file that information with the Court in a pleading on or before March 6, 2007.

IT IS SO ORDERED, this 14th day of February, 2007.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I hereby certify that the foregoing Order and Notice of Hearing was mailed to the following:

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Date: February 14, 2007