



IT IS ORDERED as set forth below:

Date: December 23, 2014

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBER
	:	
DICKEY VALLERY	:	11-11040-WHD
MELBA JANE VALLERY,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtors.	:	BANKRUPTCY CODE

**ORDER ON MOTION TO ENFORCE THE DISCHARGE
INJUNCTION AGAINST CAPITAL ONE BANK (USA), N.A.**

Before the Court is the Motion to Enforce the Discharge Injunction, filed by Dickey and Melba Vallery (hereinafter the “Debtors”). This contested matter is a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 1334; § 157(b)(2)(O); *In re Gervin*, 300 F. App’x 293 (5th Cir. 2008); FED. R. CIV. P. 9020 (providing that Rule 9014 governs a motion for an order of

contempt); *see also Barrientos v. Wells Fargo Bank, Nat'l Ass'n*, 633 F.3d 1186 (9th Cir. 2011) (motion to enforce the discharge injunction is properly considered a motion for contempt and, therefore, must be filed as a motion in the bankruptcy case, rather than as an adversary proceeding); *Solow v. Kalikow (In re Kalikow)*, 602 F.3d 82, 93–94 (2d Cir. 2010) (affirming a district court's order affirming the bankruptcy court's decision to enforce an existing discharge injunction by motion without the filing of an adversary proceeding).

On December 17, 2014, the Court held a hearing on notice to Capital One Bank (USA), N.A. (hereinafter “Capital One”). Notice of the hearing was properly served upon Capital One in accordance with Rules 9020, 9014, and 7004(h) of the Federal Rules of Bankruptcy Procedure.¹ The Court hereby makes the following findings of fact and conclusions of law:

¹ The Court scheduled the hearing by way of an order entered November 21, 2014 (Dkt. No. 28) (hereinafter the “November 21st Order”). In the November 21st Order, the Court directed the Debtors to serve a copy of the November 21st Order upon Capital One in the manner required by Rules 9020, 9014, and 7004(h) of the Federal Rules of Bankruptcy Procedure and to file a certificate of service prior to the hearing. As of the time of the hearing, the Debtors had not filed a certificate of service. However, during the hearing, in response to the Court’s inquiry, Mrs. Vallery confirmed that she had complied with the service requirements outlined in the November 21st Order. Following the hearing, the Debtors filed a certificate of service, indicating service upon an officer of Capital One *via* certified mail. Although the certificate of service indicates that service was accomplished on December 17, 2014, the Court finds, based upon the statement made by Mrs. Vallery during the hearing, that the date is an error and that the Debtors actually effected service prior to the hearing.

1. The Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code on March 23, 2011 (hereinafter the “Petition Date”). The Debtors scheduled certain debts owed to Capital One.
2. During the case, the Debtors obtained an order avoiding a judicial lien held by Capital One.
3. The Court entered an order discharging the Debtors in June 2011 (the “Discharge Order”), and the case was closed.
4. Prior to the Petition Date, Capital One sued the Debtors in the State Court of Coweta County. *See* Civ. Action No. 09SV1381 (hereinafter the “State Court Action”). Notwithstanding the fact that the State Court Action was apparently stayed due to the Debtors’ bankruptcy filing, the Debtors received a notice to appear on December 5, 2014, for a calendar call in the State Court Action.
5. On November 14, 2014, the Debtors sought to reopen their bankruptcy case to obtain relief from the State Court Action, which appears to have been filed for the purpose of obtaining a judgment on a debt that has now been discharged.
6. On November 21, 2014, the Court entered an order reopening the case and setting a hearing on the Debtors’ Motion for December 17, 2014. Capital

One failed to appear at the hearing.

7. All debts owed by the Debtors to Capital One as of the Petition Date have been discharged, pursuant to section 727 of the Bankruptcy Code.
8. Section 524(a)(2) “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover or offset any such debt as a personal liability of the debtor.” 11 U.S.C. § 524(a)(2).
9. This Court has the power to coerce compliance with the Discharge Order. *Alderwoods Group, Inc. v. Garcia*, 682 F.3d 958, 966-67(11th Cir. 2012) (“In the bankruptcy context, “the creditor who attempts to collect a discharged debt is violating not only a statute but also an injunction and is therefore in contempt of the bankruptcy court that issued the order of discharge.”) (quoting *Cox v. Zale Del., Inc.*, 239 F.3d 910, 915 (7th Cir. 2001)); *see also Hardy v. United States ex rel. I.R.S. (In re Hardy)*, 97 F.3d 1384, 1390 (11th Cir. 1996).
10. “In addition to the traditional sanctions for coercing compliance with an injunction—incarceration or financial penalty . . . a bankruptcy court may issue orders to obviate conduct that stands to frustrate administration of the

Bankruptcy Code,” including enjoining the prosecution “in state court claims against former debtors.” *Garcia*, 682 F.3d at 966-67.

The Court finds that Capital One is in contempt of the Discharge Order and that this Court has the authority to compel Capital One to cease its attempts to obtain a judgment on a discharged debt. Accordingly, the Court finds that the Debtors’ Motion to Enforce the Discharge Injunction should be, and hereby is, **GRANTED**.

IT IS ORDERED that Capital One is hereby directed: (1) to cause the immediate dismissal of the State Court Action; and (2) to file the affidavit of a party with knowledge of the dismissal of the State Court Action evidencing that the State Court Action has been dismissed. Said affidavit shall also be served upon the Debtors at the address listed on the distribution list attached hereto.

IT IS FURTHER ORDERED that, if Capital One fails to comply with all of the terms of this Order on or before **January 16, 2015**, the Court will consider the imposition of sanctions upon Capital One, such as a daily fine to compel compliance with the Discharge Order.

END OF DOCUMENT

Distribution List

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