

MEMORANDUM OPINION

August 30, 2004

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

IN RE:	:	
	:	
CLARENCE JOSEPH COLWART, III	:	Case No. 03-32965
ELIZABETH HELLUIN COLWART	:	Chapter 7
	:	
Debtors	:	
	:	
CLARENCE JOSEPH COLWART, III	:	
ELIZABETH HELLUIN COLWART	:	
	:	
Plaintiffs	:	
	:	
v.	:	Adv. Proc. No. 04-3055
	:	
COUNTRYWIDE HOME LOANS	:	
	:	
Defendant	:	

BEFORE THE HONORABLE RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR PLAINTIFFS:

RICHARD M. MAYER, ESQ.
1111 Northshore Drive, Suite S-570
Knoxville, Tennessee 37919

APPEARANCES (Continued):

FOR DEFENDANT:

FELICIA F. COALSON, ESQ.
109 Northshore Drive
Knoxville, Tennessee 37919

1 THE COURT: This adversary proceeding is before me on the Complaint
2 filed by the Plaintiffs/Debtors on March 22, 2004, alleging that the Defendant,
3 Countrywide Home Loans, has violated the injunctive provisions of 11 U.S.C.
4 § 524(a)(2). The Debtors request that the Defendant be held in contempt pursuant to
5 powers granted the court under 11 U.S.C.A. § 105(a) (West 1993) and that damages
6 be assessed against the Defendant for its willful violations of § 524(a)(2), including the
7 actual costs for the prosecution of this adversary proceeding, attorney's fees, and
8 punitive damages.

9 The record before me consists of nine exhibits introduced into evidence and
10 the testimony of the Debtor Clarence Colwart, III.

11 This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

12 The Debtors filed the Voluntary Petition commencing their Chapter 7
13 bankruptcy case on May 29, 2003. At the time of their bankruptcy filing, the Debtors
14 owned real property located at 276 Cleveland Avenue, Houma, Louisiana, secured by
15 a Deed of Trust executed on June 12, 1998, in favor of the Defendant. In their
16 Statement of Intentions, the Debtors expressed their intent to surrender the Louisiana
17 property to the Defendant.

18 On August 4, 2003, the Defendant filed a Motion for Relief from the Stay
19 and the court entered an Order of Abandonment and Relief from Automatic Stay on
20 August 29, 2003, granting the requested relief allowing the Defendant to take
21 possession of the property and enforce its rights under the terms of its Deed of Trust
22 and Louisiana law. The Debtors received their discharge on September 22, 2003.

23 On January 20, 2004, the Debtors' attorney, Richard M. Mayer, prepared
24 and faxed a letter to George B. Dean, Jr., Esquire, attorney for the Defendant in
25 Monroe, Louisiana, concerning the Plaintiffs' bankruptcy case and Mr. Mayer's

1 apparent concern that attempts were being made to collect on the discharged debt.
2 Mr. Mayer also prepared and faxed another letter to Attorney Laddie L. Freeman for
3 the Defendant on January 20, 2004, advising Mr. Freeman that the Debtors had been
4 discharged and were no longer personally liable for any debt. Both of these letters
5 were precipitated by the January 7 and 8, 2004, printing of a newspaper ad in a
6 Louisiana newspaper that provided:

7 CLARENCE JOSEPH COLWART, III AND ELIZABETH
8 HELLUIN COLWART, or anyone knowing their whereabouts,
9 please contact Laddie L. Freeman, Attorney, (985) 868-1530;
10 Legal rights involved. 2x January 7, 8 2004.

11 Thereafter, the Plaintiffs received a Payoff Demand Statement dated
12 February 18, 2004, from the Defendant, stating that the Debtors' account with the
13 Defendant "is in Foreclosure" and giving a total payoff amount of \$98,907.58 valid
14 through March 15, 2004. The Payoff Demand Statement also gives information
15 regarding payment of the payoff amount, advising that all payoffs must be via wire or
16 certified funds only, along with the wiring and mailing address information.

17 Mr. Colwart testified that he received two, I believe it was, additional statements, that
18 were not labeled "Payoff Demand Statements" and were not in the same format as the
19 February 18 statement, but basically just updated the payoff amount with accrued
20 interest and costs.

21 By the present action, the Debtors contend that the February 18, 2004
22 Payoff Demand Statement was an attempt to collect a prepetition debt in violation of
23 the § 524(a)(2) discharge injunction.

24 Pursuant to 11 U.S.C. § 727(b), once the discharge is granted in a
25 Chapter 7 case, the debtor is generally no longer liable for any prepetition debts. This

1 discharge of debts accomplishes the Bankruptcy Code’s primary goal of relieving an
2 honest but unfortunate debtor of his indebtedness so that he may make a fresh start.
3 *See In re Williams*, 291 B.R. 445, 446 (Bankr. E.D. Tenn. 2003) (quoting *In re*
4 *Krohn*, 886 F.2d 123, 125 (6th Cir. 1989) (citing *Local Loan Co. v. Hunt*, 54 S. Ct.
5 695, 699 (1934)). “A discharge in bankruptcy does not extinguish the debt itself,
6 but merely releases the debtor from personal liability for the debt.” *Williams*, 291
7 B.R. at 446 (quoting *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 53 (5th
8 Cir. 1993)).

9 Section 727 allows a Chapter 7 debtor to obtain a discharge and directs
10 the court to enter an order granting a debtor’s discharge, but it does not govern
11 the effect of a discharge. Discharge triggers the “discharge injunction” of
12 11 U.S.C. § 524(a)(2), which provides:

13 (a) A discharge in a case under this title —

14

15 (2) operates as an injunction against the commencement
16 or continuation of an action, the employment of process,
17 or an act, to collect, recover or offset any such debt as a
18 personal liability of the debtor, . . . [.]

19 By virtue of § 524(a)(2)’s permanent injunction, creditors may not attempt to
20 collect a discharged prepetition debt. *See In re Leonard*, 307 B.R. 611, 613
21 (Bankr. E.D. Tenn. 2004) (“Section 524(a) was designed to ‘ensure that once a
22 debt is discharged, the debtor will not be pressured in any way to repay it.’”)
23 (quoting *Stoneking v. Histed (In re Stoneking)*, 222 B.R. 650, 652 (Bankr. M.D.
24 Fla. 1998) (quoting H.R. REP., NO. 595, 95th Cong., 1st Sess. 364 (1977))).

25 Here in this case, Countrywide Home Loans was granted relief from the

1 automatic stay on August 29, 2003, in order to allow it to commence foreclosure
2 proceedings against the Debtors' Louisiana property. The fact that the Defendant
3 caused a legal notice to be published in connection with a foreclosure does not
4 violate the discharge injunction. The same cannot, however, be said with regards
5 to the mailing of the Payoff Demand Statement to the Debtors. First, the title of
6 the document itself, Payoff Demand Statement, indicates that its purpose is to
7 demand a payoff of a loan from the recipient. Additionally, the Payoff Demand
8 Statement provides a "Total Payoff Due," states that the payoff is "void" after a
9 certain date, advises that the loan "is in Foreclosure," notifies the Plaintiffs that
10 "Payoff funds must be made payable to [the Defendant] and will be accepted by
11 WIRE or CERTIFIED FUNDS ONLY[.]" and gives the methods for making either a
12 wire or certified funds payment via mail. The court finds that the Payoff Demand
13 Statement clearly does not merely provide information to the Plaintiffs
14 concerning the foreclosure of the Louisiana property but instead is an express
15 attempt to collect a discharged prepetition debt from the Plaintiffs in violation of
16 § 524(a).

17 Because the Plaintiffs' prepetition obligations to the Defendant under
18 the Deed of Trust were discharged on September 22, 2003, the Defendant's
19 mailing of the Demand Statement in February 2004 constitutes a violation of the
20 discharge injunction. Although "§ 524 does not impliedly create a private right of
21 action[.]" *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 422 (6th Cir. 2000), the
22 court has the power to assess damages against the Defendant pursuant to its
23 inherent powers under 11 U.S.C. § 105(a), which imposes upon the court a duty
24 to uphold the provisions of the Bankruptcy Code. Section 105(a) defines the
25 power of the court as follows:

1 The court may issue any order, process, or judgment that is
2 necessary or appropriate to carry out the provisions of this
3 title. No provision of this title providing for the raising of an
4 issue by a party in interest shall be construed to preclude the
5 court from, sua sponte, taking any action or making any
6 determination necessary or appropriate to enforce or
7 implement court orders or rules, or to prevent an abuse of
8 process.

9 “The basic purpose of section 105 is to [provide] the bankruptcy courts [the]
10 power to take whatever action is appropriate or necessary in aid of the exercise of
11 their jurisdiction.” *Casse v. Key Bank Nat’l Ass’n (In re Casse)*, 198 F.3d 327, 336
12 (2d Cir. 1999) (quoting 2 COLLIER ON BANKRUPTCY ¶ 105-5 to -7 (Lawrence P. King
13 ed., 15th ed. 1999)). Again, § 105(a) does not, in and of itself, create a private
14 cause of action; it too must be invoked in connection with another section of the
15 Bankruptcy Code. *See Pertuso*, 233 F.3d at 423; *Yancy v. Citifinancial, Inc. (In re*
16 *Yancy)*, 301 B.R. 861, 868 (Bankr. W.D. Tenn. 2003).

17 Sections 524(a) and 105(a), together, authorize the court to hold the
18 Defendant in contempt and to assess damages for its violation of the discharge
19 injunction. Civil contempt “is a sanction to enforce compliance with an order of
20 the court or to compensate for losses or damages sustained by reason of
21 noncompliance.” *McComb v. Jacksonville Paper Co.*, 69 S. Ct. 497, 499 (1949);
22 *see also United States v. Bayshore Assocs., Inc.*, 934 F.2d 1391, 1400 (6th Cir. 1983)
23 (“Broadly, the purpose of civil contempt is to coerce an individual to perform an
24 act or to compensate an injured complainant.”). Civil contempt does not require
25 an element of willfulness by the contemptuous party. *In re Crabtree*, 39 B.R. 702,

1 710 (Bankr. E.D. Tenn. 1984).

2 Upon a finding of civil contempt, it is within the court's discretion to
3 impose fines to compensate the aggrieved party for damages sustained by the
4 contemptuous conduct. *Thomasville Furniture Indus. v. Elder-Beerman Stores*, 250
5 B.R. 609, 620 (S.D. Ohio 1998); *In re Osman*, 302 B.R. 357, 370 (Bankr. N.D.
6 Ohio 2003). Fines payable to the aggrieved party must be based upon actual
7 damages incurred by the aggrieved party as a result of the contempt and/or
8 noncompliance. *Bayshore Assocs.*, 934 F.2d at 1400; *Thomasville Furniture*, 250
9 B.R. at 620 (citing *Ross v. Myers*, 883 F.2d 486, 491 (6th Cir. 1989)). Accordingly,
10 fines do not ordinarily exceed actual damages plus reasonable attorneys fees and
11 expenses incurred prosecuting the contempt. *Braun*, 152 B.R. at 474 (citing
12 *Winner Corp. v. H.A. Caesar & Co., Inc.*, 511 F.2d 1010, 1015 (6th Cir. 1975) and
13 *Matter of Grand Jury Investigation (90-3-2)*, 748 F. Supp. 1188, 1204 n. 22 (E.D.
14 Mich. 1990)). Here, the Debtors seek compensation for their out-of-pocket
15 expenses consisting of \$64.00 in lost wages of Mr. Colwart and \$30.00 for gas
16 associated with travel to and from his attorney's office and the court for today's
17 hearing, together with attorney fees in the amount of \$1,850.00 incurred in the
18 prosecution of this adversary proceeding.

19 In addition, the Debtors have requested that the court assess punitive
20 damages against the Defendant. "The purpose of punitive damages is not to
21 compensate the plaintiff but to punish the wrongdoer and to deter others from
22 committing similar wrongs in the future." *Haney v. Copeland (In re Copeland)*,
23 291 B.R. 740, 794 (Bankr. E.D. Tenn. 2003) (quoting *Concrete Spaces, Inc. v.*
24 *Sender*, 2 S.W.3d 901, 906-07 (Tenn. 1999)). Clearly, it is within the court's
25 discretion to assess punitive damages for willful violations of § 524(a); however,

1 “punitive damages are only appropriate where there is some sort of nefarious or
2 otherwise malevolent conduct. Thus, in situations involving a violation of the
3 discharge injunction, punitive damages have been properly limited to
4 circumstances where there exists a complete and utter disrespect for the
5 bankruptcy laws.” *Osman*, 302 B.R. at 372.

6 Although Countrywide Home Loans is a sophisticated creditor and is a
7 major player in consumer bankruptcy cases in this district and in other districts, I
8 cannot find from the proof before me that punitive damages are appropriate. I do find,
9 however, as I have stated, that the Defendant has violated the injunctive provisions of
10 § 524(a)(2) and that the Debtors are entitled to damages or a fine levied against the
11 Defendant of \$1,944.00.

12 This Memorandum constitutes findings of fact and conclusions of law as
13 required by Rule 52(a) of the Federal Rules of Procedure made applicable to this
14 adversary proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure. An
15 appropriate Judgment will be entered. I will not ask the court reporter to transcribe
16 my opinion. If either party requests its transcription, Ms. Dunn will transcribe it, I
17 will make such edits as I deem appropriate, and copies will be served on counsel. A
18 Judgment will be entered today or tomorrow.

19 FILED: August 31, 2004

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/s/ Richard Stair, Jr.
RICHARD STAIR, JR.
U.S. BANKRUPTCY JUDGE

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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 03-32965

CLARENCE JOSEPH COLWART, III
ELIZABETH HELLUIN COLWART

Debtors

CLARENCE JOSEPH COLWART, III
ELIZABETH HELLUIN COLWART

Plaintiffs

v.

Adv. Proc. No. 04-3055

COUNTRYWIDE HOME LOANS

Defendant

J U D G M E N T

This adversary proceeding came on for trial on August 30, 2004, on the Complaint filed by the Plaintiff on March 22, 2004. For the reasons set forth in the memorandum opinion dictated by the court from the bench containing findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure, it is ORDERED, ADJUDGED, and DECREED that the Plaintiffs, Clarence Joseph Colwart, III and Elizabeth Helluin Colwart, shall have and recover from the Defendant, Countrywide Home Loans, the sum of \$1,944.00, of which amount \$94.00 represents compensatory damages and \$1,850.00 the attorney fees associated with the prosecution of this action.

The attorney fee portion of the judgment rendered herein shall be remitted directly by the Defendant to the Plaintiffs' attorney, Richard M. Mayer.

ENTER: August 30, 2004

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE