

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In the Matter of:	:	Chapter 7
	:	
CONNIE L. NICKELSON d/b/a THE	:	
ARTHRITIS AND PAIN CLINIC,	:	
	:	
Debtor	:	Case No. 02-54916 RFH
	:	
	:	
GLINDA ANN TUCKER,	:	
INDIVIDUALLY AND AS	:	
ADMINISTRATRIX OF THE	:	
ESTATE OF STEPHANIE A.	:	
BENTON, DECEASED,	:	
	:	
Movant	:	
	:	
	:	
vs.	:	
	:	
	:	
CONNIE L. NICKELSON d/b/a THE	:	
ARTHRITIS AND PAIN CLINIC,	:	
	:	
Respondent	:	

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

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MEMORANDUM OPINION

Glinda Ann Tucker, Individually and as Administratrix of the Estate of Stephanie A. Benton, deceased, Movant, filed on February 27, 2003, a Motion for Relief from 11 U.S.C. § 524 Discharge Injunction. The motion came on for a hearing on March 20, 2003. The Court, having considered the motion and the arguments of counsel, now publishes this memorandum opinion.

Connie L. Nickelson d/b/a The Arthritis and Pain Clinic, Respondent, is a physician. Stephanie A. Benton was a patient of Respondent. Ms. Benton is deceased. Movant is Ms. Benton's mother and the administratrix of Ms. Benton's estate. Movant filed on October 18, 2002, a medical malpractice action in state court against Respondent for the alleged wrongful death of Ms. Benton.

Respondent filed on October 28, 2002, a petition for relief under Chapter 7 of the Bankruptcy Code. Respondent's bankruptcy petition was filed before she was served with the state court litigation. The Court entered on February 5, 2003, an order discharging Respondent from all dischargeable obligations.

Movant seeks relief from the discharge injunction to proceed with the state court litigation. Movant wants to recover from Respondent's malpractice insurance company. Movant does not seek any recovery directly from Respondent.

Respondent opposes the relief sought by Movant. Respondent has new employment. Respondent argues that the time spent giving depositions and attending

a trial in state court would have a negative impact on her new employment.

Movant seeks relief from the discharge injunction of section 524 of the Bankruptcy Code. This section provides, in part, as follows:

§ 524. Effect of discharge

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

....

(2) 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; and

....

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

11 U.S.C.A. § 524(a)(2), (e) (West 1993).

In Owaski v. Jet Florida Systems, Inc. (In re Jet Florida Systems, Inc.),¹

Owaski brought a defamation suit against his former employer (the “debtor”) prior to the debtor filing for Chapter 11 relief. Owaski moved for relief from the discharge injunction in order to seek a judgment of liability against the debtor so that Owaski

¹ 883 F.2d 970 (11th Cir. 1989).

could proceed against the debtor's liability insurance.²

The Eleventh Circuit Court of Appeals stated that: "The judgment of the district court is AFFIRMED on the basis of and for the reason stated in the well-reasoned opinion rendered in this case in the district court, . . ."³ The opinion of the district court was attached as an appendix to the Eleventh Circuit's decision. The district court stated, in part:

The section 524(a) injunction was designed primarily to protect the debtor and the bankruptcy estate. However, a discharge will not act to enjoin a creditor from taking action against another who also might be liable to the creditor.

. . . .

In the case at bar, Appellant Owaski concedes that he may not proceed against the assets of the bankruptcy estate. However, Owaski maintains that he may proceed against the debtor to establish the debtor's liability in order to recover from the debtor's insurer.

. . . .

Moreover, section 524(e) permits a creditor to seek recovery from "any other entity" who may be liable on behalf of the debtor. 11 U.S.C. § 524(e). In discussing the scope of section 524(a) and (e), *Collier's* makes this observation:

the provisions of 524(a) apply only with respect to the *personal liability* of the debtor. When it is necessary to commence or continue a suit against

² 883 F.2d at 971.

³ Id.

a debtor in order, for example, *to establish liability of another*, perhaps a surety, such suit would not be barred. Section 524(e) was intended for the benefit of the debtor but was not meant to affect the liability of third parties or *to prevent establishing such liability* through whatever means required.

Certainly, the obligation of an insurer can be viewed as such a secondary liability under the provisions of section 524(e).

883 F.2d at 973.

The court also stated:

Appellees also maintain that Appellee's insurer will be prejudiced by the continuation of Appellant's defamation suit. The reported cases, however, underscore that the purpose of section 524 of the *Bankruptcy Code* is to protect the debtor and not to shield third parties such as insurers who may be liable on behalf of the debtor.

883 F.2d at 975.

Finally, the court stated:

III. CONCLUSION

We find that section 524(a) prohibits a plaintiff from proceeding against a debtor who has received a discharge of debt in order to recover from the bankruptcy estate. However, pursuant to section 524(e), a plaintiff may proceed against the debtor simply in order to establish liability as a prerequisite to recover from another, an insurer, who may be liable. . . .

883 F.2d at 976.

"It is generally agreed that the debtor's discharge does not affect the

liability of the debtor's insurer for damages caused by the debtor and that the creditor may seek to recover from the insurer." 4 Collier on Bankruptcy ¶ 524.05, p. 524-46 (15th ed. rev. 2003).

The Court is persuaded that it should grant Movant relief from the discharge injunction to establish, if she can, Respondent's liability and to proceed against Respondent's liability insurer if Respondent is found to be liable in the state court litigation.

An order in accordance with this memorandum opinion will be entered this date.

DATED the 3rd day of April, 2003.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court