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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA

7 In re) Case No. 05-28143-D-7
8)
9 MINSTER, HOWARD I.,) Docket Control No. MS-1
10 Debtor.) DATE: March 22, 2006
11) TIME: 10:00 a.m.
12) DEPT: D (Courtroom 34)

13 MEMORANDUM DECISION

14 On July 5, 2005 Howard Minster ("Debtor") filed a voluntary
15 petition under Chapter 7 of the United States Bankruptcy Code
16 ("Code"). On October 24, 2005 Union Bank of California, N.A. (the
17 "Bank") filed a complaint for non-dischargeability and objecting to
18 the Debtor's discharge (the "Complaint"). The Complaint requested
19 that the Debtor's indebtedness to the Bank be declared non-
20 dischargeable pursuant to section 523(a)(2) of the Code and further
21 that the court determine that the Debtor is not entitled to a
22 discharge pursuant to section 727(a)(3) of the Code.

23 On February 21, 2006 the Bank filed a motion to dismiss the
24 denial of discharge claim (the "Motion"), pursuant to Federal Rule of
25 Bankruptcy Procedure Rule 7041 ("Bankruptcy Rules"). Prem M. Dhawan,
26 the Chapter 7 trustee in this case (the "Trustee"), filed opposition
27 to the Motion. The matter came on for hearing at the date and time
28 indicated above and the matter was taken under submission after oral
argument.

1 The Bank's Motion summarily states, that the Complaint included
2 the section 727 cause of action because the Bank was of the belief
3 that the Debtor failed to account for proceeds (tens of thousands of
4 dollars), from a pre-petition refinance and subsequent sale of his
5 residence. The Motion goes on to state, the Bank took the Debtor's
6 Bankruptcy Rule 2004 examination and the parties then went through to
7 mediation. The Bank explains that it was during the mediation
8 process, that the Debtor provided a satisfactory explanation as to
9 the proceeds from the pre-petition refinance and sale of his
10 residence. Following this mediation the Bank and the Debtor reached
11 a settlement of the Complaint. The Bank then filed the Motion asking
12 the court to dismiss the section 727 cause of action.

13 The Motion indicates that pursuant to the settlement the Debtor
14 "will pay the Bank \$15,000 over 15 months subject to certain
15 conditions (namely that he obtain a discharge and that this motion be
16 granted)." The Bank did not provide a copy of the settlement
17 agreement. The Motion does not explain, or go into, even in the most
18 summary fashion, the merits of the Bank's section 523 cause of action
19 and why the Debtor and the Bank settled this claim for \$15,000.

20 It is contrary to public policy for a debtor to "purchase" his
21 discharge. Case law makes clear that public policy concerns arise
22 where the circumstances surrounding the request for dismissal of a
23 section 727 cause of action creates the appearance that the debtor is
24 purchasing his discharge. See, In re: McKissack v. Douglas, 30 B.R.
25 703, _____. In re: Bank One v. Kallstrom, 298 B.R. 753, 759 (10th
26 Cir. BAP). While the court is of the opinion that it is not per se
27 inappropriate to dismiss a section 727 cause of action when it is
28 combined with a section 523 cause of action, the appropriateness of

1 dismissal will be highly fact driven.

2 In the case at hand, the Bank asserts that after investigation,
3 the Debtor satisfied the Bank that its section 727(a)(3) cause of
4 action is without merit and that the \$15,000 payment is solely to
5 satisfy the Bank's section 523(c)(2) claim. However, the Motion and
6 attendant pleadings are void of any meaningful analysis of the merits
7 of the section 523 and/or section 727 claims. The fact that Debtor's
8 \$15,000 payment to the Bank is conditioned upon the Debtor obtaining
9 a discharge can reasonably be perceived as the Debtor "purchasing"
10 his discharge. The court appreciates that the payment to the Bank,
11 being conditioned on the Debtor obtaining a discharge, is open to
12 interpretation; however, the logical inference that the settlement is
13 conditioned on the Debtor receiving his discharge, is that the money
14 is being paid, not so much as to satisfy the section 523 claim, but
15 for dismissal of the section 727 claim.

16 Although dismissal of a section 727 claim, in a situation as
17 here, is not per se inappropriate, the party seeking dismissal has
18 the burden to clearly demonstrate there is no consideration being
19 paid, directly or indirectly, for dismissal of the section 727 claim.

20 In the present case a copy of the settlement agreement has not
21 been provided to the court, the settlement is described in a contrite
22 and summary fashion, and the settlement of the claim is conditioned
23 upon the Debtor receiving his discharge. These facts foster the
24 perception that the Debtor is "buying" his discharge and this is
25 contrary to public policy. For the reasons stated the court will
26 deny the Motion without prejudice.

27 A separate order will be entered consistent with this memorandum
28 decision.

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2 Dated: March 24, 2006

3 /s/
4 Robert S. Bardwil
5 United States Bankruptcy Judge
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