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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9 SPEROS SOMKOPULOS,) Case No. 05-22199-B-13J
10 Debtor.)
11)
12 SPEROS SOMKOPULOS,)
13 Plaintiff) Adv. No. 05-2472-B
14 vs.)
15 CALIFORNIA RECOVERY,) Docket Control No. WW-3
16 Defendant.) Date: November 7, 2006
17) Time: 9:30 a.m.

18 On or after the calendar set forth above, the court issued
19 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

20 Because the ruling constitutes a "reasoned explanation" of
21 the court's decision under the E-Government Act of 2002 (the
"Act"), a copy of the ruling is hereby posted on the court's
22 Internet site, www.caeb.uscourts.gov, in a text-searchable
23 format, as required by the Act. However, this posting does not
constitute the official record, which is always the ruling
appended to the minutes of the hearing.

24 **DISPOSITION AFTER ORAL ARGUMENT**

25 Federal Rule of Civil Procedure 56, made applicable to this
26 proceeding by Bankruptcy Rule 7056, provides that summary judgment is
27 appropriate if the pleadings, depositions, answers to interrogatories,
28 admissions on file, and declarations, if any, show that there is "no

1 genuine issue of fact and that the moving party is entitled to
2 judgment as a matter of law."

3 The plaintiff, Speros Somkupulos, filed this motion for partial
4 summary judgment against California Debt Recovery on the plaintiff's
5 three-count complaint to disallow the defendant's claim filed in the
6 plaintiff's bankruptcy case, for a determination that the plaintiff's
7 obligation to the defendant was discharged in a prior bankruptcy case,
8 and for a determination that the judgment entered against the debtor
9 in favor of John Majich and the defendant's recordation of that
10 judgment are void as violative of 11 U.S.C. § 524(a). The plaintiff
11 argues that summary judgment is appropriate because the undisputed
12 facts before the court entitle the plaintiff to judgment as a matter
13 of law.

14 The plaintiff, however, has failed to show that he is entitled to
15 such judgment, and the motion for summary judgment is denied. The
16 court finds that there is at least a genuine issue of material fact as
17 to whether or not the defendant's predecessor in interest, John
18 Majich, had actual knowledge of the plaintiff's 1997 bankruptcy case
19 (Case No. 97-22334-C-7) (the "Prior Case").

20 The Prior Case was a "no-asset, no-bar-date-case." Existing
21 authorities generally hold that claims otherwise dischargeable by the
22 debtor are discharged in such a case even though their claims were not
23 scheduled and even though the omitted creditors had no notice of the
24 case. 11 U.S.C. § 727(b); 11 U.S.C. § 523(a)(3); Beezley v.
25 California Land Title Co. (In re Beezley), 994 F.2d 1433, 1435-1436
26 (9th Cir. 1993); White v. Nielsen (In re: Nielsen), 383 F.3d 922 (9th
27 Cir. 2004).

1 However, if an omitted creditor holds a claim that is excepted
2 from discharge by 11 U.S.C. §§ 523(a)(2), (4), or (6), and that
3 creditor did not have notice or actual knowledge of the bankruptcy
4 case in sufficient time to file a timely dischargeability complaint,
5 the claim is non-dischargeable. 11 U.S.C. § 523(a)(3)(B).

6 Thus, the presence or absence of Mr. Majich's notice or actual
7 knowledge of the Prior Case must be determined to resolve the issue of
8 whether the debt asserted by defendant was discharged in the Prior
9 Case. If Mr. Majich had notice or actual knowledge of the Prior Case
10 in time to object to the dischargeability of his debt, none of the
11 exceptions contained in Section 523(a)(3) would apply regardless of
12 whether or not he was scheduled, and his claim would be discharged.

13 On the other hand, if Mr. Majich did not have notice or actual
14 knowledge of the Prior Case, his claim would not be discharged if it
15 was a debt of the kind specified in 11 U.S.C. §§ 523(a)(2), (a)(4), or
16 (a)(6). Here, plaintiff has not shown that the defendant's claim is
17 not one that is excepted from discharge pursuant to 11 U.S.C. §§
18 523(a)(2), (a)(4), or (a)(6).

19 Because disputed material facts exist on the issues of (1) Mr.
20 Majich's notice or actual knowledge of the Prior Case and (2) whether
21 Mr. Majich's claim is dischargeable under 11 U.S.C. §§ 523(a)(2),
22 (a)(4), or (a)(6), plaintiff has not shown that he is entitled to
23 judgment as a matter of law, and the motion is denied.

24 The court neither makes nor implies any ruling on the legal issue
25 raised by the defendant's counterclaim and opposition to this motion.
26 The defendant has argued in its opposition that the exception to the
27 operation of Section 523 set forth in In re Beezley, 994 F.2d 1433 (9th
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1 Cir. 1993) does not apply to discharge the defendant's debt because
2 the trustee filed a no-asset report in the case allegedly as the
3 result of the plaintiff's concealment of assets. Neither the
4 plaintiff nor the defendant, however, has provided any authority
5 regarding whether a challenge to the correctness of a no-asset report
6 is or is not permissible more than eight years after the report is
7 filed and the bankruptcy case is closed.

8 The court makes no factual findings in this ruling. The Supreme
9 Court has held that "at the summary judgment stage the judge's
10 function is not himself to weigh the evidence and determine the truth
11 of the matter but to determine whether there is a genuine issue for
12 trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

13 The court will issue a minute order.
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