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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:	)	Case No. 05-22777-D-7
	)	Docket Control No. ARP-5
MELANIE HUGHES	)	
	)	
Debtor.	)	Date: February 27, 2008
	)	Time: 10:00 a.m.
	)	Dept: D

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On October 3, 2007, Clayeo C. Arnold and Clayeo Arnold, Professional Law Corporation ("Plaintiffs") filed a Motion for Relief from the Automatic Stay, bearing Docket Control No. ARP-5 ("the Motion"). The Motion was filed in the above-captioned parent bankruptcy case, Case No. 05-22777-D-7. On November 14, 2007, Melanie Hughes ("Defendant"), as the debtor in the bankruptcy case, filed opposition to the Motion ("the Opposition"). For the reasons set forth below, the court will deny the Motion as moot, and will do so by way of an order in the parent bankruptcy case. In addition, the court will construe the Opposition as a counter-motion for certification of a final judgment in Arnold v. Hughes, Adversary Proceeding No. 05-2225-D ("the adversary proceeding"), and will grant the counter-motion.¹

1. As the Motion was filed in the parent case, and the Defendant seeks certification of a final judgment in the related adversary proceeding, this memorandum will be filed under Docket Control No. ARP-5 in the parent case and under Docket Control Nos. ARP-4 and ARP-6 in the adversary proceeding.

1 On February 27, 2008, the Motion came on for final hearing,
2 Amelia Pritchard appearing for the Plaintiffs, and the Defendant
3 appearing on her own behalf. The court advised the parties of
4 its tentative decision to certify a final judgment in the
5 adversary proceeding, as discussed below, and heard additional
6 remarks from both parties.

7 In the Motion, the Plaintiffs seek an order determining that
8 the automatic stay of 11 U.S.C. § 362(a) was lifted upon entry of
9 this court's August 24, 2007 order granting the Plaintiffs'
10 motion for partial summary judgment in the adversary proceeding
11 ("the Partial Summary Judgment Order"), or alternatively, lifting
12 the stay to permit them to exercise their rights under applicable
13 state law.

14 The Defendant responds that no judgment of nondischarge-
15 ability has been entered, and that the Plaintiffs have failed to
16 establish that either claim preclusion or issue preclusion
17 applies to the issue of nondischargeability, for purposes of the
18 Motion.² The court construes the Opposition as a counter-motion
19 for certification of a judgment under Federal Rule of Civil
20 Procedure 54(b) ("Rule 54(b)"), made applicable to the Motion and
21 in the adversary proceeding by Federal Rules of Bankruptcy
22 Procedure 9014(c) and 7054(a). The court notes that a court may
23 also issue a Rule 54(b) certification sua sponte. 10 MOORE'S
24 FEDERAL PRACTICE, § 54.21[1][a] (Matthew Bender 3d ed.)

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26 2. The Defendant also argued that this court had no juris-
27 diction to resolve the Motion, due to her then pending district
28 court appeal. That issue has now been resolved by the district
court's dismissal of the appeal, which is further discussed
below.

1 ("MOORE'S").

2 II. ANALYSIS

3 This court has jurisdiction over the Motion pursuant to 28
4 U.S.C. §§ 1334 and 157(b)(1). The Motion is a core proceeding
5 under 28 U.S.C. § 157(b)(2)(G) and (i).

6 A. Procedural Background

7 A brief history of the adversary proceeding is necessary.
8 As indicated above, the Plaintiffs filed their complaint on June
9 14, 2005. In their first two causes of action, the Plaintiffs
10 sought a determination that the attorney's fee award is
11 nondischargeable under 11 U.S.C. § 523(a)(6) as a willful and
12 malicious injury. In their third and fourth causes of action,
13 the Plaintiffs sought to deny the Defendant's discharge, pursuant
14 to 11 U.S.C. § 727(a), for failure to keep adequate records and
15 for concealing property with the intent to hinder, delay, or
16 defraud creditors.

17 The Defendant answered the complaint on September 9, 2005.

18 On May 22, 2007, the parties filed cross-motions for summary
19 judgment. The Plaintiffs' motion was actually a motion for
20 partial summary judgment, because it pertained only to the causes
21 of action to determine the attorney's fee award to be
22 nondischargeable under § 523(a)(6), and did not address the § 727
23 causes of action. Following briefing and oral argument, the
24 court denied the Defendant's motion for summary judgment, and
25 granted the Plaintiffs' motion in part. Specifically, the court
26 granted the motion to the extent that it sought to determine the

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1 attorney's fee award to be nondischargeable.³

2 Thus, on August 24, 2007, by way of the Partial Summary
3 Judgment Order, the attorney's fee award was declared
4 nondischargeable. The court deferred a determination of the
5 amounts due under the attorney's fee award pending a subsequent
6 motion.

7 On September 4, 2007, the Defendant filed a Notice of Appeal
8 from the Partial Summary Judgment Order and a statement of
9 election to have the appeal heard by the district court.

10 In the absence of a Rule 54(b) certification,
11 any order or other decision, however designated, that
12 adjudicates fewer than all the claims or the rights and
13 liabilities of fewer than all the parties does not end
14 the action as to any of the claims or parties and may
be revised at any time before the entry of a judgment
adjudicating all the claims or all the parties' rights
and liabilities.

15 Fed. R. Civ. P. 54(b).

16 Thus, the Partial Summary Judgment Order, because it did not
17 address the Plaintiffs' § 727(a) causes of action, adjudicated
18 fewer than all the claims in the adversary proceeding, and was
19 therefore not final. As a result, the district court granted the
20 Plaintiffs' motion to dismiss the Defendant's appeal.⁴

21 In the meantime, on October 3, 2007, the Plaintiffs had
22 filed a motion in the adversary proceeding to determine the
23 amounts owed by the Defendant on the nondischargeable attorney's
24 fee award. The motion was briefed and argued, and the court
25 stated its findings and conclusions on the record at a hearing on

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27 3. The court denied that portion of the motion seeking a
determination of nondischargeability as to other alleged debts.

28 4. Order Granting Appellees' Motion to Dismiss Appeal,
filed January 30, 2008, Hughes v. Arnold, Case No. CV 07-01841
LEW, U.S. District Court for the Eastern District of California.

1 February 13, 2008. The court issued a minute order on February
2 19, 2008 ("Order Determining Amounts"), determining that the
3 amounts owed on the award were \$122,702.37 to Clayeo C. Arnold
4 and \$190,237.01 to Clayeo Arnold, Professional Law Corporation.

5 B. Rule 54(b) Certification

6 In the Motion, the Plaintiffs complain that they have been
7 unable to collect on the attorney's fee award. They "wish to
8 execute on Debtor's post petition wages," and argue that "the
9 court's order of August 24, 2007 [the Partial Summary Judgment
10 Order] operates as a de facto lift of the automatic stay."⁵ The
11 Defendant argues in response that the Partial Summary Judgment
12 Order "is just that, an order. It is not a final judgment."⁶
13 The Defendant is correct.

14 In effect, both parties want finality to the order; the
15 Plaintiffs so they can execute, and the Defendant so she can
16 appeal. The goal of finality can be accomplished by
17 certification pursuant to Rule 54(b), which provides:

18 When an action presents more than one claim for relief
19 -- whether as a claim, counterclaim, crossclaim, or
20 third-party claim -- or when multiple parties are
21 involved, the court may direct entry of a final
judgment as to one or more, but fewer than all, claims
or parties only if the court expressly determines that
there is no just reason for delay.

22 Fed. R. Civ. P. 54(b).

23 The court is required to make an express determination that
24 there is no just reason for delay and to expressly direct the
25 entry of judgment. MOORE'S, § 54.21[3]. The court is to make

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27 5. The Motion, 4:1-3.

28 6. The Opposition, 8:27-9:1.

1 the determination in light of the policy of "prevent[ing]
2 piecemeal appeals in cases which should be reviewed only as
3 single units." Id., quoting Curtiss-Wright Corp. v. General
4 Electric Co., 446 U.S. 1, 10 (1980). Further, an order may not
5 be certified under Rule 54(b) unless it finally disposes of the
6 claims adjudicated in the order. MOORE'S, § 54.22[2][a].

7 Taking these requirements in reverse order, the court finds
8 that the Partial Summary Judgment Order, as supplemented by the
9 Order Determining Amounts, completely disposes of the first and
10 second causes of action of the Plaintiffs' complaint. Nothing
11 remains to be adjudicated in connection with those causes of
12 action.

13 Next, certifying the Partial Summary Judgment Order as final
14 will not offend the policy of preventing piecemeal appeals,
15 because the causes of action adjudicated in the order, the
16 Plaintiffs' first and second causes of action, are factually and
17 legally distinct from their third and fourth causes of action.
18 The first and second causes of action depend on facts that are
19 starkly different from those alleged in the third and fourth
20 causes of action. The first and second causes of action seek a
21 different form of relief -- a determination that specific debts
22 are not dischargeable -- from the relief sought in the third and
23 fourth causes of action -- denial of the Defendant's discharge as
24 a whole. The grounds for the different forms of relief are
25 separate and distinct from each other. As a result, there is no
26 possibility of duplicative appellate review. In other words, "no
27 appellate court would have to decide the same issues more than
28 once even if there were subsequent appeals." See Curtiss-Wright

1 Corp., 446 U.S. at 8.

2 Finally, the court finds no just reason for delay in
3 entering a final judgment on the Partial Summary Judgment Order.
4 In making this determination, the court is to consider whether a
5 Rule 54(b) certification "will alleviate some hardship or
6 injustice that would result from the delay in the entry of
7 judgment." MOORE'S, § 54.23[1][b]. In this case, the court
8 finds that delaying entry of judgment would unfairly delay the
9 Plaintiffs' ability to recover on their claims against the
10 Defendant, and would unfairly delay the Defendant's right to
11 appellate review.

12 Accordingly, the court finds that there is no just reason
13 for delay, and directs the entry of a judgment on the Partial
14 Summary Judgment Order, as supplemented by the Order Determining
15 Amounts.

16 C. The Motion for Relief from Stay

17 Upon entry of a final appealable judgment on the Partial
18 Summary Judgment Order, as supplemented by the Order Determining
19 Amounts, the automatic stay will no longer operate to preclude
20 execution on that judgment. "[T]he automatic stay provisions of
21 Section 362 do not preclude the execution of a judgment, which
22 has been held by the bankruptcy court to be non-dischargeable,
23 upon property of the debtor which is not property of the estate."
24 Watson v. City Nat'l Bank (In re Watson), 78 B.R. 232, 235 (9th
25 Cir. BAP 1987); see also Arneson v. Farmers Ins. Exch. (In re
26 Arneson), 282 B.R. 883, 892 (9th Cir. BAP 2002); Palm v.
27 Klapperman (In re Cady), 266 B.R. 172, 180 (9th Cir. BAP 2001).
28 The creditor does not need to seek relief from the stay.

The Plaintiffs have not indicated in their Motion any intention to seek to enforce the judgment against property of the Defendant's bankruptcy estate. Instead, they intend to pursue only property of the Defendant that is not property of the estate. Thus, pursuant to Watson and Cady, the Motion will be denied as moot, by separate order filed in the parent case.

III. CONCLUSION

For the reasons set forth above, the court will issue an order in the bankruptcy case denying the Motion as moot, will issue an order in the adversary proceeding granting the Defendant's counter-motion for certification of a final judgment, and will enter in the adversary proceeding a judgment on the Partial Summary Judgment Order, as supplemented by the Order Determining Amounts.

Dated: March 3, 2008

/s/
ROBERT S. BARDWIL
United States Bankruptcy Judge