

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings
Under Chapter 7

GARY Q. CLODFELTER
LOIS J. CLODFELTER

Case No. 03-30254

Debtor(s).

CITY OF ALTON

Plaintiff(s),

Adversary No. 03-3058

v.

GARY Q. CLODFELTER
LOIS J. CLODFELTER

Defendant(s).

OPINION

THIS MATTER is before the Court on the City of Alton's (plaintiff's) Complaint to Determine Dischargeability of Debt pursuant to 11 U.S.C. § 523(a)(7) and on Gary and Lois Clodfelter's (defendants') Motion to Set Aside Order Granting Motion for Relief from Stay. The issue before the Court is whether a fine levied for violations of a municipal building ordinance is nondischargeable under the Bankruptcy Code.

The facts in this case are not in dispute. On May 23, 2002, the plaintiff served defendant Gary Clodfelter¹ with a Complaint and Notice of Ordinance Violation alleging violations of §§ 9-1-2 and 11-6-2 of the City Code. After trial, the defendant was found guilty of both charges.

¹Debtor Lois Clodfelter was not named as a defendant in the municipal proceeding. However, she was named as a defendant in this adversary proceeding.

In its order of November 15, 2002, the Circuit Court for the Third Judicial Circuit, Madison County, Illinois fined the defendant \$500.00, with execution of the order stayed for 60 days in order to allow the defendant to correct the offending portion of his roof. The circuit court further ordered that if the defendant failed to make the necessary repairs to the property within 60 days, an additional fine of \$100.00 per day would be imposed for each day after January 15, 2003 that the property remained in violation.

The defendants filed a petition under Chapter 7 of the Bankruptcy Code on January 24, 2003. The plaintiff subsequently filed the instant Complaint to Determine Dischargeability of Debt alleging that the fines imposed by the circuit court are excepted from discharge pursuant to 11 U.S.C. § 523(a)(7). It also filed a Motion for Relief from the Automatic Stay seeking leave of court to permit the continuation of the pending state court litigation.² On March 26, 2003, the Court conducted a preliminary hearing on the plaintiff's Motion for Relief from Stay. No one appeared for the defendants at that hearing and, consequently, the Court granted the plaintiff's motion. Defendants then filed a Motion to Vacate the Order Granting Relief from Stay. The basis of the Motion to Vacate, as well as defendants' defense to the dischargeability complaint, is that because the ordinance violations from which the debt arose are civil rather than criminal in nature, they are "protected by the Bankruptcy Code" and are dischargeable.

DISCUSSION

Section 523(a)(7) of the Bankruptcy Code provides, in pertinent part:

²At hearing on May 12, 2003, the Court granted the plaintiff's Motion for Relief from Stay to the extent that it could proceed against the property and repair the violating portions of the roof. However, the Court declined to lift the stay at to permit the plaintiff to enforce its state court judgment until a determination of dischargeability could be made.

- (a) A discharge under § 727 . . . of this title does not discharge an individual debtor from any debt—
 - (7) to the extent such debt is for a fine, penalty or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss. . . .

11 U.S.C. § 523(a)(7). In order for an obligation to be nondischargeable as a penalty under § 523(a)(7), it must be to and for the benefit of a governmental unit and it must be penal in nature. In re Merritt, 186 B.R. 924, 932 (Bankr. S.D. Ill. 1995) citing Kelly v. Robinson, 479 U.S. 36, 51-52 (1986). There is no dispute that the debt in this case satisfies the first prong of the analysis, as it is owed to the City of Alton, which clearly is a governmental unit. Therefore, the dispositive issue in this case is whether the obligation is punitive or compensatory in nature.

Compensatory awards are those granted in order to compensate a party for “injury sustained and nothing more; such as will simply make good or replace the loss caused by the wrong or injury.” Black’s Law Dictionary, 390 (6th ed. 1990). Conversely, punitive obligations are those imposed in order to inflict punishment or penalty for wrongful conduct. Merritt, 186 B.R. at 932. In the instant case, it is clear that the monetary award levied against the debtor was intended to be penal in nature. First, the circuit court’s November 15, 2002 order expressly refers to the monetary awards as *fin*es. Specifically, paragraphs two and three of that order state:

- (2) Defendant fined \$500.00 . . . , [said] fine stayed 60 days. Defendant given 60 days to remove roof constructed in violation of setback requirements. . . .;
- (3) Defendant fined an additional \$100 per day after January 15th 2003 that the removal described in #2 above has not occurred.

A “fine” is defined as “a pecuniary *punishment or penalty* imposed by lawful tribunal . . . and may include penalt[ies] recoverable in a civil action.” Black’s Law Dictionary 632 (6th ed. 1990) (emphasis added). The characterization of the award in this way indicates the circuit court’s intent to penalize the defendant for his actions.

In addition to the language of the circuit court’s order, nothing in the facts of this case indicate that the fine was imposed to compensate the plaintiff in any way or to reimburse it for pecuniary loss. The plaintiff did not prosecute the defendant in this case in order to create a debtor-creditor relationship or to recover monies owed. Rather, suit was brought in order to further the plaintiff’s responsibilities of maintaining public safety and of enforcing its laws. The fines were levied as a means of punishing the debtor for his violation of the ordinances and of compelling him to bring his property into compliance with the code, not as a way of reimbursing the plaintiff for any expenditures it may have made. Therefore, the Court finds that because the debt is owed to a government unit and was not awarded as compensation for pecuniary loss, the requirements of 11 U.S.C. § 523(a)(7) have been satisfied and the the obligation is nondischargeable in bankruptcy.

In so concluding, the Court rejects the defendant’s assertion that § 523(a)(7) is limited to obligations arising from criminal sanctions or proceedings. The fact that the underlying charges in this case were civil in nature rather than criminal is of no consequence. The language of § 523(a)(7) makes no distinction between criminal and civil penalties. The *only* limitation provided for in § 523(a)(7) is that the debt not be one which was awarded to compensate the governmental unit for pecuniary loss. Courts addressing this issue have routinely applied § 523(a)(7) to obligations arising from civil litigation. See In re Jimmo, 204 B.R. 655 (Bankr. D.

Conn 1997) (accrued fine of \$128,500 imposed for environmental violations nondischargeable); In re Winn, 92 B.R. 938 (Bankr. M.D. Fla. 1988) (civil contempt of court award nondischargeable). As the United States Court of Appeals for the Seventh Circuit noted, “bankrupts who have violated laws passed for the public good cannot escape punishment by going into bankruptcy.” Matter of Zarzynski, 771 F.2d 304, 306 (7th Cir. 1985) quoting In re Abramson, 210 Fed. 878, 880 (2d Cir. 1914).

Having concluded that the debt in this case is nondischargeable, the Court must now address the defendants’ Motion to Vacate Order Granting Motion for Relief from Stay. In their motion, defendants assert that because the underlying ordinance violations are civil rather than criminal in nature, they are “protected by the Bankruptcy Code and [are] dischargeable in the Bankruptcy Code.” See Defendants’ Motion to Vacate Order Allowing City of Alton to Lift the Automatic Stay at ¶ 13. Even though the defendants are correct in that the violations are, in fact, civil violations, they have provided the Court with no basis as to why the Court should vacate its prior order and reinstate the automatic stay. The issue of whether a debt is dischargeable in bankruptcy is a completely separate matter from whether a creditor is entitled to relief from stay. In addition, the issue of the effect of the stay is now moot. While the stay may have been in effect at the time that the motion was filed, pursuant to 11 U.S.C. § 362(c), the automatic stay only continues until such time as the property is no longer property of the estate and a discharge is granted.³ As the property in this case has been abandoned by the trustee and an order of discharge

³Section 362(c) of the Bankruptcy Code states:

Except as provided in subsections (d), (e), and (f) of this section—

- (1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the

has been entered, the automatic stay is no longer in effect.⁴

For the reasons set forth above, the Court concludes that the debt owed to the plaintiff in this case is nondischargeable pursuant to 11 U.S.C. § 523(a)(7) and the plaintiff's Complaint to Determine Dischargeability is granted as to defendant Gary Clodfelter. However, the complaint is dismissed as to defendant Lois Clodfelter, as she was not named as a defendant in the ordinance violation proceeding and is not responsible for the debt. In addition, the defendants' Motion to Vacate Order Granting Motion for Relief from Stay is denied.

SEE WRITTEN ORDER.

ENTERED: September 22, 2003

/s/ William V. Altenberger
UNITED STATES BANKRUPTCY JUDGE-3

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- estate; and
(2) the stay of any other act under subsection (a) continues until the earliest of—
- (A) the time the case is closed;
 - (B) the time the case is dismissed;
 - (C) if the case is a case under chapter 7 . . . , the time a discharge is granted or denied.

11 U.S.C. § 362(c).

⁴In this case the trustee filed her no asset report on February 26, 2003. The Order of Discharge was entered April 23, 2003.