

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

IN RE:	)	In Proceedings
	)	Under Chapter 7
JOHN EDWARDS, JR.,	)	
	)	No. BK 88-30556
Debtor(s).	)	
THE PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	
	)	
Plaintiff(s),	)	
v.	)	ADVERSARY NO.
	)	88-0254
JOHN EDWARDS, JR.,	)	
	)	
Defendant(s).	)	

MEMORANDUM AND ORDER

This matter is before the Court on cross motions for summary judgment in an action to determine the dischargeability of a debt under section 523(a)(7) of the Bankruptcy Code. The relevant facts, which neither party disputes, are as follows:

On March 12, 1980 debtor, the defendant in a state court criminal proceeding, appeared for a hearing on a motion to fix bail. The state court set bail in the sum of \$300,000.00. Subsequently, on May 6, 1980, defendant was ordered to appear for a May 8, 1980 hearing on all pending motions. When defendant failed to appear on that date, the court ordered the bail bond forfeited, and then set bail in the amount of \$600,000.00. On May 13, 1980, and again on May 14, 1980 the case was called for trial, and on both dates, defendant failed to appear. The state court again ordered the bail bond forfeited. On May 30, 1980 the court ordered that a warrant issue for defendant's arrest and that upon his arrest, defendant be held without bond. When defendant failed

to appear within thirty days after the bond forfeiture of May 13, 1980, the court, on June 18, 1980, ordered the cash bond forfeited and entered judgment in favor of the State for \$300,000.00. Subsequent payments reduced the balance due to \$266,279.19. Plaintiff, the State of Illinois, now alleges that debtor owes it \$266,279.19 as a result of the bond forfeiture, and that this debt is nondischargeable under section 523(a)(7).

Summary judgment is appropriate only where the record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56. The party moving for summary judgment has the burden of establishing the lack of a genuine issue of material fact. Korf v. Ball State University, 726 F.2d 1222, 1226 (7th Cir. 1984). The Court must view the evidence, and the reasonable inferences to be drawn therefrom, in the light most favorable to the party opposing summary judgment. After reviewing both motions, the Court finds, for the reasons stated, that no factual dispute exists and that plaintiff is entitled to summary judgment as a matter of law.

Initially, the Court notes plaintiff's argument that defendant's "Motion for Summary Judgment" is, in substance, a motion to dismiss the complaint and as such, is not timely filed. However, in view of the fact that defendant is proceeding pro se in this matter, the Court will address the arguments raised in defendant's motion.

Defendant contends that under the Illinois Code of Civil Procedure, the state court judgment in question is no longer

enforceable, and that as a result, plaintiff's objection to dischargeability is untimely. The Illinois Code of Civil Procedure provides that "[e]xcept as herein provided, no judgment shall be enforced after the expiration of 7 years from the time the same is rendered, except upon the revival of the same by a proceeding provided by Section 2-1601 of this Act...." Ill.Rev.Stat. ch. 110, ¶12-108(a). The only issue before this Court, however, is whether the debt in question is dischargeable. Whether the plaintiff can revive and enforce the judgment is an issue that the state court must resolve should this Court determine that the debt is nondischargeable.

Section 523(a)(7) of the Bankruptcy Code provides that an individual debtor is not discharged from any debt "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 the case of In re Midkiff, 86 B.R. 239 (Bankr. D. Colo. 1988), the court held that a debt owed by a bailbondsman to a surety did not constitute a fine, penalty or forfeiture and was therefore dischargeable. Id. at 240. The court cited Pioneer General Insurance Co. v. Paige, unpub. Case No. 87 E 194, April 15, 1988 [available on WESTLAW, 1988 WL 62500] in support of its decision. Pioneer General specifically distinguishes the situation where a fine, penalty or forfeiture is imposed against a criminal defendant. As stated by that court:

Were such a criminal defendant to file bankruptcy and a Section 523(a)(7) action brought against him regarding a bail bond forfeiture, that section would apply to except that debt from discharge. Such a result would flow from the

fact that the bail bond forfeiture would be imposed in that scenario upon the criminal defendant directly as a fine or forfeiture.

Id. The Court agrees with the reasoning set forth in Pioneer General and holds that the \$266,279.19 debt owed by defendant to plaintiff is nondischargeable under 11 U.S.C. §523(a)(7).

Accordingly, for the reasons stated, defendant's Motion for Summary Judgment is DENIED and plaintiff's Motion for Summary Judgment is GRANTED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: March 14, 1989