

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

TIMOTHY WARD ELKINS, SR., and  
BONNIE JEAN ELKINS,

Case No. 03-33317

Debtors.

**ORDER DENYING MOTION TO ENFORCE DISCHARGE INJUNCTION**

This matter came before the Court on Debtors Timothy Elkins and Bonnie Elkins' ("Debtors") Motion to Enforce Discharge Injunction ("Motion") wherein they requested that sanctions be imposed on Creditor WMC Mortgage Corp. ("WMC"). Hearing was held on November 19, 2004. Debtor Timothy Elkins appeared in person and by counsel, Karl J. Wulff. No one appeared on behalf of WMC.

The facts are undisputed. Debtors previously owned real estate on which WMC held a mortgage. The property was eventually foreclosed upon and was sold at foreclosure sale on January 31, 2003. Thereafter, on August 13, 2003, Debtors filed a joint voluntary petition under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §101 et. seq. ("Code"). Debtors listed WMC as a creditor on scheduled D of their petition, and WMC presumably received all appropriate notices of any proceedings in this matter. Debtors received their discharge under Code § 727 on November 14, 2003.

Sometime after their discharge, Debtors attempted to re-mortgage their current residence. They were informed that they were denied the lowest interest rate because the prior foreclosure proceeding with WMC showed up on a credit report. Therefore, on July 22, 2004, Debtors sent a letter (Exhibit "A" at trial) to WMC requesting WMC to "update [its] credit report." On July 29, 2004, WMC responded by letter (Exhibit "B" at trial) whereby it indicated that it had accurately reported the Debtors' account status pursuant to the Fair Credit Reporting Act and, therefore, declined to change Debtors' credit report. Debtors then filed this Motion on October 6, 2004.

In their Motion, Debtors allege that "during the pendency of the case and since discharge, WMC MORTGAGE CORP. has continued to demand payment on pre-petition indebtedness in violation of the automatic stay and the discharge injunction." However, at the hearing no such allegations were even mentioned, and no evidence was presented that WMC ever contacted Debtors post-filing until

Debtors' July 22, 2004 letter prompted WMC's reply letter of July 29, 2004. Clearly, then, in regard to these allegations, WMC did not violate the automatic stay under Code § 362 or the discharge injunction under Code § 524.

The Debtors also claim that WMC's refusal to update their credit report constitutes a violation of the discharge injunction. Code § 524(a) states, in relevant part, that a discharge:

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727 ... of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived ...

Even assuming a liberal interpretation of Code § 524, the Court fails to see how WMC has violated the discharge injunction. The foreclosure and resulting sale of the subject property were completed prior to the filing of Debtors' bankruptcy. In addition, there was no allegation, much less evidence, that WMC reported any false or inaccurate information to the credit reporting agencies. Moreover, it was the Debtors who approached the creditor to "update" an accurate credit report. The Court has searched for case law that would support Debtors' position that this failure to "update" violates Code § 524. However, no such support exists, as the creditor is not obligated under the Bankruptcy Code to change the way it accurately reports the status of a loan. *See Vogt v. Dynamic Recovery Services (In re Vogt)*, 257 B.R. 65, 71 (Bankr.D.Col. 2000).

Finally, Debtors allege that WMC should be sanctioned because its refusal to update Debtors' credit report is a violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et. seq.*, and the Illinois Consumer Fraud And Deceptive Practices Act, 815 IL.C.S. 505/1 *et. seq.* Regardless of the merit of these claims, the Court lacks jurisdiction over them. *See* 28 U.S.C. §§ 1334 and 157. The Debtors must instead bring them in the appropriate state or federal district court.

For the above reasons, Debtors' Motion to Enforce Discharge Injunction is DENIED.

Dated: December 8, 2004

/s/ James K. Coachys, Judge  
United States Bankruptcy Court