

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

In re:	)	
	)	
DONALD J. FERGUSON and	)	In Proceedings under
DELORES J. FERGUSON,	)	Chapter 7
	)	
Debtors.	)	BK 01-34019
	)	
	)	
DONALD J. FERGUSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ADV 05-3075
	)	
DELORES J. FERGUSON, GAIL P. STIPES,	)	
and HONORABLE BARBARA J. CROWDER,	)	
Associate Circuit Judge, Third Judicial Circuit,	)	
State of Illinois,	)	
Defendants.	)	

**OPINION**

This matter came on for hearing on May 18, 2005, upon motions to dismiss filed by the three defendants. The plaintiff, Donald Ferguson, was present by Attorney Donald Groshong. Defendant Delores Ferguson was present by Attorney Mark Levy. Defendant Gail Stipes was present by Attorney Mark Bauman. Defendant Barbara Crowder was present by Assistant Attorney General Val Simhauser. The complaint alleges the following facts:

1. The plaintiff and Defendant Delores Ferguson, husband and wife, filed a joint chapter 7 bankruptcy case on November 9, 2001.
2. Defendant Delores Ferguson filed a petition for dissolution of marriage against

the plaintiff in the Illinois state court on January 11, 2002.<sup>1</sup> Delores Ferguson was represented in the divorce proceedings at all relevant times by attorney Gail Stipes, a defendant in the instant case.

3. The plaintiff and defendant Delores Ferguson received a discharge under § 727 of the Bankruptcy Code on February 19, 2002.

4. After the discharge order was entered, the chapter 7 trustee and the plaintiff negotiated an agreement allowing the plaintiff to purchase certain non-exempt assets belonging to the bankruptcy estate.<sup>2</sup>

5. On January 5, 2004, Honorable Barbara Crowder entered a judgment by default in the state court dissolution of marriage proceedings, awarding certain property subject to the Bankruptcy Court's August 7, 2003 order to defendant Delores Ferguson.

6. The plaintiff filed three post-judgment motions, on February 4, 2004, March 30, 2004, and July 14, 2004, respectively, seeking to set aside the judgment entered by Judge Crowder. The first two motions were denied by Judge Crowder on June 16, 2004. The last

---

1

The complaint alleges that the dissolution of marriage petition was filed on January 11, 2001. However, defendants argued, without dispute by the plaintiff, that the state court's corrected records reflect that the actual date of the divorce filing was a year later on January 11, 2002. In any event, the question of which date is accurate has no bearing on the Court's ruling since the complaint does not allege that a violation occurred in filing the divorce petition.

2

Although not mentioned specifically in the complaint, the parties agree that an Order approving the stipulation between the plaintiff and the chapter 7 trustee was entered by the Bankruptcy Court on August 7, 2003, providing in pertinent part that in exchange for a payment of \$8,000.00 by the plaintiff, "Donald M. Samson, trustee, convey[s] to Donald Ferguson all interests of the bankrupt estate, **including the interest of co-debtor Delores Ferguson**, in and to the GMC Sierra, Gulf Stream 5<sup>th</sup> Wheel, 1955 Chevrolet and 1993 Cadillac DeVille . . . ." (emphasis added).

motion was denied by Judge Crowder on January 3, 2005.<sup>3</sup>

7. The plaintiff filed the instant adversary complaint on March 9, 2005, alleging that the state court judgment of January 5, 2004 “relat[ed] to matters of property and money on account of debts and claims that arose antecedent to the filing of [the plaintiff’s] bankruptcy case under Chapter 7 herein.” The complaint sought an order from the Bankruptcy Court voiding the state court judgment because none of the defendants had obtained relief from the automatic stay in the bankruptcy court and because entry of the judgment violated the automatic stay provisions of 11 U.S.C. § 362 and the discharge injunction of 11 U.S.C. § 524.

The Court notes at the outset that the plaintiff did not file a brief opposing the motion to dismiss although required to do so by Rule 9013-3 of the Local Rules of this Court. Such failure constitutes an independent basis to dismiss the complaint pursuant to that Rule. Turning next to defendant Crowder’s argument that she should be dismissed from the litigation based on her absolute immunity as a state court judge, the Court agrees with defendant Crowder that all of the acts alleged in the complaint with respect to her arise in the context of her judicial role. The Court finds further that she is absolutely immune from suit based on such acts, *e.g.*, *Stump v. Sparkman*, 435 U.S. 349 (1978), and that the plaintiff’s complaint should be dismissed with prejudice as to defendant Crowder.

The Court also finds merit in the arguments of the three defendants that the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The standard to be used by the Court in determining the sufficiency of a complaint is firmly

---

3

The plaintiff does not dispute that he did not appeal any of Judge Crowder’s orders.

established. All well pleaded facts in the complaint must be taken as true, *e.g.*, *Triad Assocs., Inc. v. Chicago Hous. Auth.*, 892 F. 2d 583, 586 (7<sup>th</sup> Cir. 1989), *cert. denied*, 498 U.S. 845 (1990), and all reasonable inferences must be drawn in favor of the plaintiff. *E.g.*, *Dawson v. General Motors Corp.*, 977 F. 2d 369, 372 (7<sup>th</sup> Cir. 1992). A motion to dismiss for failure to state a claim can be granted “only if it appears beyond doubt that the plaintiff could prove no set of facts entitling him to relief.” *Triad Assocs., Inc. v. Chicago Hous. Auth.*, 892 F. 2d at 586.

In the case at hand, the Court finds that the plaintiff's complaint does not state a cause of action against defendants Delores Ferguson, Gail Stipes, and Barbara Crowder because the conduct alleged in the complaint does not violate the automatic stay of 11 U.S.C. § 362 or the discharge injunction of 11 U.S.C. § 524. At the time that defendant Crowder entered the judgment of dissolution of marriage on January 5, 2004, transferring certain property from the plaintiff to Delores Ferguson, the automatic stay was not in effect, having terminated as to the property in question upon its earlier purchase from the estate by the plaintiff, 11 U.S.C. § 362 (c)(1), and having terminated with respect to “any other act” as defined in 11 U.S.C. § 362 (c)(2), when the debtors were discharged on February 19, 2002. 11 U.S.C. § 362 (c)(2)(C).

In addition, the discharge injunctions of § 524(a)(1) and (2) do not enjoin all post-discharge collection activity but rather only that activity directed toward collecting pre-petition debts. Section 524(a)(1) protects a chapter 7 debtor only “with respect to any debt

discharged under section 727 . . . .”<sup>4</sup> 11 U.S.C. § 524(a)(1). Section 727(b), in turn, provides that a discharge under § 727(a) discharges the debtor from debts “that arose before the date of the order for relief under this chapter . . . .” 11 U.S.C. § 727(b). The complaint fails to allege any facts to show that the conduct in question constituted an attempt to collect a debt that arose before the bankruptcy case was filed on November 9, 2001. Plaintiff’s oral argument on May 18, 2005, convinces the Court that the plaintiff could not amend the complaint to state a cause of action since the “debts” in question arose post-petition when the divorce court entered its judgment obligating the plaintiff to transfer assets to defendant Delores Ferguson.<sup>5</sup> There simply are no well pleaded facts supporting the existence of a pre-petition obligation that Delores Ferguson and her counsel were attempting to collect by obtaining the state court judgment.<sup>6</sup> Moreover, as a practical matter, the plaintiff’s interpretation of the protections afforded by the discharge injunction

---

4

Similarly 11 U.S.C. § 524(a)(2), in referring to “any such debt,” relates back to the definition supplied by § 524(a)(1) and, accordingly, means pre-petition debts.

5

The plaintiff has not alleged any pre-petition obligation that Delores Ferguson is attempting to collect. At the March 18, 2005 hearing, his sole explanation supporting the alleged violation was that Judge Crowder’s judgment required the plaintiff to transfer certain property to Delores Ferguson that he claimed as his own by virtue of the Bankruptcy Court’s order of August 7, 2003. Both his purchase of the assets and the requirement that he transfer certain of these assets to Delores Ferguson were transactions that occurred long after the bankruptcy case was filed.

6

The Court notes that the plaintiff appeared to rely on 11 U.S.C. § 524(a)(3), reading from this section at the hearing on May 18, 2005 to support an argument that the discharge injunction restrains acts to collect or recover from property of the debtor that is acquired after the commencement of the case. However, § 524(a)(3) is not applicable to this case since it deals with the effect of the discharge on community property, see *generally 4 Collier on Bankruptcy* ¶ 524.02[3] (15<sup>th</sup> ed. rev. 2004), and Illinois is not a community property state.

would bar every Illinois state judge sitting in a dissolution of marriage proceeding from entering orders distributing property if one or both spouses had received an earlier discharge under chapter 7 of the Bankruptcy Code.

Finally, the Court finds that voiding the state court's judgment would violate the *Rooker-Feldman* doctrine, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), since the plaintiff failed to appeal the state court judgment of January 5, 2004, and now asks this Court to review the impact of the August 7, 2003 purchase agreement on the propriety of that decision. Such a determination is a matter of state law that was raised, or should have been raised, in the state court proceedings.

Based on the foregoing, the Court finds it appropriate to dismiss with prejudice the plaintiff's complaint as to defendants Delores Ferguson, Gail Stipes, and Barbara Crowder, and there being no defendants remaining in this matter, to dismiss with prejudice this adversary proceeding.

SEE WRITTEN ORDER.

ENTERED: May 25, 2005

/s/ Kenneth J. Meyers-2  
UNITED STATES BANKRUPTCY JUDGE

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

In re:	)	
	)	
DONALD J. FERGUSON and	)	In Proceedings under
DELORES J. FERGUSON,	)	Chapter 7
	)	
Debtors.	)	BK 01-34019
	)	
	)	
DONALD J. FERGUSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ADV 05-3075
	)	
DELORES J. FERGUSON, GAIL P. STIPES,	)	
and HONORABLE BARBARA J. CROWDER,	)	
Associate Circuit Judge, Third Judicial Circuit,	)	
State of Illinois,	)	
Defendants.	)	

**ORDER**

For the reasons set forth in the Court's opinion entered this date, IT IS ORDERED that the complaint is dismissed with prejudice as to defendants Delores Ferguson, Gail Stipes, and Barbara Crowder. IT IS FURTHER ORDERED that this adversary proceeding is dismissed with prejudice.

ENTERED: May 25, 2005

/s/ Kenneth J. Meyers-2  
UNITED STATES BANKRUPTCY JUDGE