

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

IN RE:)	In Proceedings
)	Under Chapter 7
SHIRLEY HICKEY,)	
)	No. BK 87-30387
Debtor.)	
REGGIE HARBIN and)	
VICKI HARBIN,)	
)	
Plaintiffs,)	
)	
v.)	ADVERSARY NO.
)	87-0163
SHIRLEY HICKEY,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on debtors' Motion to Dismiss plaintiffs' complaint. In September 1985, debtor and her husband, Dempsey Hickey, entered into an agreement with plaintiffs for the sale of a business known as "Headquarters for Hair." As part of the contract, debtor and her husband agreed that neither of them, nor any corporation or partnership in which they had interest, would "for a period of five (5) years...directly or indirectly engage in the hair care or beauty parlor business as an owner, employee, partner, or otherwise...nor will they or either of them, let their names be used in any such business...." In April 1987, debtor filed her petition in bankruptcy and in her schedules, listed plaintiffs as unsecured creditors. The complaint in the instant case alleges that since June 24, 1987, debtor has violated the covenant not to compete by engaging in a beauty shop business known as "A Cut Above" and by using her name in public

advertisements to solicit customers. At the hearing on debtor's Motion to Dismiss, counsel for debtor agreed that the covenant not to compete had been violated, although counsel also indicated that the violation first occurred prior to the time that debtor filed her bankruptcy petition.

Count I of plaintiffs' complaint seeks injunctive relief and specifically requests that debtor be enjoined and restrained from engaging in the beauty parlor or hair care business. In Count II, plaintiffs appear to seek a determination by this Court that any damage claim resulting from debtor's breach of contract is nondischargeable. Plaintiffs, however, do not state the statutory basis for their allegation that this "debt" is nondischargeable. Plaintiffs further request, in Count II, that the Court determine that any discharge granted to debtor "shall not include a discharge of post-bankruptcy violations of said covenant not to compete...."

The Court finds that the issue of the enforceability of the covenant not to compete, and plaintiffs' corresponding request for injunctive relief, are matters of state law, and should therefore be litigated in state court. In re Cooper, 47 B.R. 842 (Bankr. W.D. Mo. 1985). Accordingly, Count I of plaintiffs' complaint is dismissed.

The Court also finds that plaintiffs' request in Count II is premature. Plaintiffs seek a determination that any damage claim resulting from debtor's breach of contract is nondischargeable. However, no damages have yet been awarded. As such, there is no "claim" or "debt" for the Court to declare dischargeable or nondischargeable. See In re Cooper, 47 B.R. at 845. In fact, it is

entirely possible that the state court would grant injunctive relief and not award damages. As stated in Cooper:

Contracts of noncompetition...will ordinarily be enforced in equity because, for the breach of such a covenant, there is no adequate remedy at law and the very purpose of such a contract may be met only by exact conformance to the terms undertaken...Thus, the injunctive remedy is peculiarly appropriate both because of the obligation of the contract and because the full damage to be suffered by the breach cannot be known certainly...Cognately, there is no need to prove damage to enforce a noncompetition employment agreement by injunction.

Id. (citations omitted). Therefore, Count II of plaintiffs' complaint is likewise dismissed.

With regard to plaintiffs' request that any post-bankruptcy violations be declared nondischargeable, the Court notes that an order of discharge serves to discharge only pre-petition debts. Section 727(b) specifically provides:

Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter....

11 U.S.C. §727(b) (emphasis added).

Accordingly, for the reasons stated above, debtor's Motion to Dismiss is GRANTED. Plaintiffs' complaint is dismissed without prejudice.

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

ENTERED: December 7, 1987