

ORDER ENTERED ON:

4-17-03

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

In re

JAMES J. FARRELL III

Ch. 7

Debtor

Case No. 94-50544

JAMES J. FARRELL III,

Plaintiff,

v.

AP No. 02-05049

SPERRY DECEW and
RICHARD BURKE,

Defendants

APPEARANCES:

James J. Farrell
8 Elm Street
Norwalk, CT 06850

pro se debtor

Heather Wilson, Esq.
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford CT 06141-5020

Attorney for defendant Burke

ORDER ON MOTION TO DISMISS

Alan H.W. Shiff, United States Bankruptcy Judge:

The plaintiff-debtor commenced this chapter 7 case on February 5, 1994. The trustee filed a May 6, 1994 report of no distribution,¹ and on August 18, 1994, the plaintiff received a discharge. On October 14, 1994, the case was closed.

¹Since no bar date for filing a proof of claim was scheduled, this is a no-asset, no-bar date case. See *Judd v. Wolfe*, 78 F.3d 110, 113 (3rd. Cir. 1996).

On April 9, 1995, the plaintiff's father died. On February 20, 2001 he moved to reopen his bankruptcy case. The motion was granted on January 24, 2002. On August 8, 2002, the plaintiff filed this adversary proceeding against the defendants for their alleged willful violation of the automatic stay and his discharge. See 11 U.S.C. §§362(h) and 524(a)(1). On November 7, 2002, the defendant Richard Burke, who at all relevant times was a Probate Court judge for the District of New Canaan, Connecticut,² filed the instant motion to dismiss, asserting that the Rooker-Feldman doctrine, *see infra*, bars the relief sought in this court. For the reasons that follow, it is determined that the doctrine does not apply.

On April 1, 1999, Judge Burke approved a final accounting, prepared by defendant Sperry DeCew, which included a setoff against a distribution to the plaintiff. On June 4, 1999, the plaintiff filed an appeal in Superior Court of Connecticut, which referred the matter to a referee. The plaintiff argued that the probate court erred in applying the setoff (the "subject debt") because it had been discharged in his bankruptcy case. On January 15, 2001, the referee recommended affirming the decision of the probate court. It is noted that the state court appeal was suspended after the plaintiff moved to reopen his bankruptcy case, but before it was in fact reopened.

It is well settled by the Rooker-Feldman doctrine that the grant of original jurisdiction to district courts, *see* 28 U.S.C. § 1331 and by extension to bankruptcy courts, 28 U.S.C. § 157(a), "does not authorize district [or bankruptcy] courts to exercise appellate jurisdiction over [final] state court judgments." *Verizon Maryland Inc. v. Public Service Commission of Maryland*, ___ U.S. ___, 72 S.Ct 1753, 1760 (2002). Here, as noted, the plaintiff's state court appeal was suspended. Thus, there is no final state court judgment,

²It is noted that the plaintiff has filed a motion to substitute Judge Burke with the current probate court judge for the District of New Canaan. It is not clear whether the State of Connecticut has also been named as a defendant.

and Rooker-Feldman is inapplicable. Moreover, that doctrine does not bar this court from determining whether a debt had been discharged and whether a discharge injunction has been violated. See 11 U.S.C. §§ 523(a) and 524(a)(1). See also, *In re Cruz*, 254 B.R. 801, 811 (Bankr. S.D.N.Y. 2000) and *In re Pavelich*, 229 B.R. 777, 783(9th Cir. BAP 1999) (“bankruptcy court erred when it ruled that the Rooker-Feldman doctrine stripped it of jurisdiction to consider whether the state court’s judgment was void ab initio and whether the discharge injunction had been violated.”)

The plaintiff must have an opportunity to prove the predicate facts to establish such a violation, *i.e.*, that the subject debt arose prepetition and was discharged. See, *e.g.*, *Judd v. Wolfe*, 78 F.3d 110, 113 (3rd. Cir. 1996) (cited in *In re Boland*, 275 B.R. 675, 677 (Bankr. D. Conn. 2002)) and 11 U.S.C. § 523(a)(3).

Accordingly, the motion to dismiss is DENIED, and it is SO ORDERED; and

IT IS FURTHER ORDERED that not later than May 19, 2003, the plaintiff is directed to exchange and file, with two copies provided to chambers, a proposed pretrial order in accordance with this court’s pretrial form and guidelines for evidentiary proceedings.

Dated at Bridgeport, CT this 17th of April, 2003.


Alan H. W. Shiff
United States Bankruptcy Judge

In Re: James J. Farrell III v. Richard Burke

Case No: 94 - 50544

Adversary No: 02 - 05049

CERTIFICATE OF MAILING

The undersigned Clerk in the Office of the United States Bankruptcy Court hereby certifies that a copy of the document attached hereto was mailed this date to:

James J. Farrell III
8 Elm Street
Norwalk, CT 06850, Pro Se Plaintiff

Heather J. Wilson Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141, Defendant's Attorney

Office of the United States Trustee
Copy of Order placed in court mailbox

Dated: 04/17/03

By: krf