

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:) CASE NO. 03-34723
)
DAWN LYON,) CHAPTER 7
)
DEBTOR.) DOC. I.D. NO. 15

APPEARANCES

Thomas J. May
Inmate #96118
Maine State Prison
807 Cushing Road
Warren, ME 04864

Pro Se Plaintiff/Movant

Russell Gary Small
Law Office of Russell Small
135 Elm Street
Bridgeport, CT 06604

Attorney for Defendant-Debtor

Dawn Lyon
141 Williams Street
Meriden, CT 06450

Former Chapter 7 Debtor

BRIEF MEMORANDUM AND ORDER DENYING MOTION TO REOPEN

Lorraine Murphy Weil, United States Bankruptcy Judge

WHEREAS, on December 18, 2003, Thomas J. May (the “Plaintiff”) commenced Adversary Proceeding No. 03-3212 against the above-captioned debtor (the “Debtor”) seeking a determination that a certain debt was nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A) and (a)(4);

WHEREAS, on July 26, 2006, the court issued a Memorandum of Decision (the “Decision”), *see* 348 B.R. 9 (Bankr. D. Conn. 2006), in the adversary proceeding (A.P. No. 03-

3212, the “Adversary Proceeding”) determining that the subject debt was discharged except to the extent of \$778.00;¹

WHEREAS, the Decision further provided:

The Debtor’s discharge does not negate any obligation [the “Obligation”] to turn the Stock, its proceeds and/or the NDB Account and the proceeds of the Third IRA over to the Plaintiff.

Lyon, 348 B.R. 9, 27 n.41. The Final Judgment did not refer to the Obligation;

WHEREAS, on March 9, 2009, the court received a letter (Doc. I.D. No. 15, the “Letter”) from the Plaintiff seeking the intervention of the court with respect to enforcing the Obligation;

WHEREAS, the court construed the Letter as a (1) Motion To Reopen (the “Motion To Reopen”) the bankruptcy case and (2) a Motion for Turnover in respect of the items referred to in the Obligation. (*See* Doc. I.D. No. 14.);

WHEREAS, on June 6, 2007, the Plaintiff obtained a writ of property execution in the Adversary Proceeding. (*See* A.P. Doc. I.D. No. 136.) On March 3, 2008, the Plaintiff obtained a writ of wage execution in the Adversary Proceeding. (*See* A.P. Doc. I.D. No. 139, collectively with A.P. Doc. I.D. No. 136, the “Writs”);

WHEREAS, a hearing (the “Hearing”) on the Motion To Reopen was convened on notice to the Plaintiff, the Debtor and her counsel. The Plaintiff appeared telephonically (he is incarcerated); neither the Debtor nor her counsel appeared. The Plaintiff represented to the court

¹ Judgment (A.P. Doc. I.D. No. 125) issued for the amount of \$778.00. A supplemental judgment (A.P. Doc. I.D. No. 132, collectively with A.P. Doc. I.D. No. 125, the “Final Judgment”) subsequently issued for costs of \$228.00.

that he had obtained no recovery pursuant to the Writs and that the Obligation still was unperformed;²

WHEREAS, Rule 69 of the Federal Rules of Civil Procedure (made applicable here pursuant to Rule 7069 of the Federal Rules of Bankruptcy Procedure) provides in relevant part as follows:

Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person – including the judgment debtor – as provided in these rules^[3] or by the procedure of the state where the court is located.^[4]

Fed. R. Civ. P. 69(a)(2);

WHEREAS, the Plaintiff may pursue his remedies with respect to the Final Judgment under Rule 7069 in the Adversary Proceeding without the reopening of this case or the Adversary Proceeding (and, at least initially, without the involvement of this court). Accordingly, reopening this case is unnecessary for that purpose;⁵

WHEREAS, the court may exercise its discretion in determining whether or not to reopen a closed case. *Cf.* 11 U.S.C. § 350(b) (reopening only for “cause”). This court does not maintain continuing jurisdiction over a debtor’s postpetition conduct (except pursuant to a judgment of this court). The Obligation was not merged into the Final Judgment. Accordingly, the court deems it inappropriate to reopen this case to deal with the Obligation and the Plaintiff should enforce those rights (if any) in any court of competent jurisdiction (if at all). Accordingly, reopening the case would be inappropriate for that purpose;

² No marshal’s or sheriff’s return on either of the Writs appears of record.

³ *See* Federal Rules of Civil Procedure, Title V.

⁴ *See* Conn. Gen. Stat. § 52-351(b).

⁵ Any inconsistent comments from the bench at the Hearing hereby are rescinded.

NOW, THEREFORE, on the reasons stated above, it hereby is **ORDERED** that the Motion To Reopen is denied as unnecessary or otherwise inappropriate; and it is further

ORDERED that the Clerk's Office shall serve this order by this court's CM/ECF system (if applicable, otherwise by first-class mail) upon the Debtor at the address listed above, her counsel, Thomas J. May, the former chapter 7 trustee and the United States Trustee; and it is further

ORDERED that the Plaintiff shall serve a copy of this order upon the Debtor at the additional address referred to by him at the Hearing (which may be the Debtor's current address) and shall file a certificate of service to evidence such service.

Dated: April 7, 2009

BY THE COURT


Lorraine Murphy Weil
United States Bankruptcy Judge