

SO ORDERED.

SIGNED this 28th day of February, 2013.



Catharine R. Aron

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:

GREGORY S. REID and
SHELLIE J. REID,

Debtors.

Case No. 12-50322

ORDER GRANTING DEBTORS' MOTION FOR SANCTIONS

THIS MATTER came on before the Court on January 30, 2013, after due and proper notice, upon Motion by Debtors for Sanctions against Optimum Outcomes, Inc. for Violation of the Discharge Injunction. Kenneth Love appeared on behalf of the Debtors, Gregory S. Reid and Shellie J. Reid, and Robert E. Price, Jr. appeared on behalf of the Bankruptcy Administrator. After considering the motion, argument of counsel, and testimony, this Court makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure:

Gregory S. Reid and Shellie J. Reid ("Debtors") filed a Chapter 7 petition on March 5, 2012. On June 7, 2012, the Debtors received a discharge, and the case was subsequently closed on June 8, 2012. Debtors filed a motion to reopen their bankruptcy case on December 3, 2012,

and on January 8, 2013 this Court entered an order reopening the Debtors' bankruptcy case so that the Debtors may seek sanctions against Optimum Outcomes, Inc. ("Optimum") for allegedly violating the discharge injunction. The Debtors filed their Motion for Sanctions Against Optimum¹ for Violation of the Discharge Injunction ("Motion").

At the hearing on the Motion, this Court heard testimony from the female debtor, Shellie J. Reid ("Debtor"). The Debtor testified that Optimum has a pattern of calling the Debtor's household several times a day for a period of time and then Optimum refrains from calling for several weeks. Debtor testified that the calls began prior to Debtors' discharge, but have continued post-discharge. Debtor further stated that she does not normally answer those phone calls, but uses her caller ID and answering machine to record the calls from Optimum. The Debtor stated her lawyer has written Optimum letters regarding the bankruptcy discharge. However, the Debtor could not remember whether she had ever explicitly communicated to Optimum that the Debtors were in bankruptcy and had received a discharge. The Debtor did state that since she visited her lawyer in November, Optimum has called another twelve times. The Debtor testified that Optimum's phone calls intimidate her and make her and her daughter nervous and worried.

This Court finds that Optimum was properly served pursuant to Rule 9014 of the Federal Rules of Bankruptcy Procedure. This Court also finds the Debtor's testimony to be credible and reliable. The discharge injunction "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 such debt is waived." 11 U.S.C. § 524(a)(2). This Court treats a violation of a discharge injunction as civil contempt, and the court

¹ According to the Debtors, Optimum is collecting a medical debt for UNC Hospitals.

may award actual damages pursuant to the statutory contempt powers set forth in 11 U.S.C. § 105. *Burd v. Walters*, 868 F.2d 665, 669 (4th Cir. 1989); *In re Bruce*, 2000 WL 33673773, at *3 (Bankr. M.D.N.C. 2000). In *Ashcraft v. Conoco, Inc.*, the Court of Appeals for the Fourth Circuit articulated the standard to establish civil contempt as: 1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) ...that the decree is in the movant's "favor"; (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) ... that [the] movant suffered harm as a result." 218 F.3d 288, 301 (4th Cir. 2000). The elements must be established by clear and convincing evidence. *Id.* at 301. Bankruptcy courts in the Fourth Circuit have also looked to whether a creditor's violation of the discharge injunction was willful. *See In re Mead*, 2012 WL 627699. (Bankr. E.D.N.C. 2012). Sanctions for a discharge injunction may include "actual damages, attorney's fees, and when appropriate, punitive damages." *In re Cherry*, 247 B.R. 176, 187 (Bankr. E.D. Va. 2000).

This Court finds that Optimum violated the discharge injunction. The Court will award the Debtors' attorney \$740.00 in fees for the filing of the Motion and for representing the Debtors at the hearing for the Motion.

Based upon the foregoing, the Debtors' Motion is GRANTED. IT IS ORDERED that Optimum pay attorney's fees in the amount of \$740.00 to Debtors' attorney, Kenneth Love, within fifteen (15) days after the entry of this order and the failure to timely pay may result in further sanctions.

END OF DOCUMENT

SERVICE LIST

Gergory S. Reid
Shellie J. Reid
Debtors

Kenneth Love
Attorney for Debtor

Robert E. Price, Jr.
Staff Attorney for BA

Optium Outcomes, Inc.
c/o CT Corporation System
150 Fayetteville Street
Box 1011
Raleigh, NC 27601-1395

Optium Outcomes, Inc.
Attn: Legal Process
Suite 500
2651 Warrenville, Road
Downer Grove, IL 60515-5559