

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF WASHINGTON
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5 In re:)

6 ROCKY AND LAURIE CLAYTON)

7 Debtors.)

Main Case No. 09-03379-FLK13

8 _____)
9 ROCKY AND LAURIE CLAYTON)

10 Plaintiffs,)

Adversary No. 09-80167-FLK

11 vs.)

12 ROUNDUP FUNDING, LLC,)

13 Defendant(s).)
14 _____)

MEMORANDUM DECISION

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17 This matter is before the court on the motion for summary judgment filed by defendant
18 Roundup Funding, LLC. The plaintiffs are Rocky and Laurie Clayton, and in their complaint, they
19 ask the court to determine that a debt assigned to the defendant's parent company B-Linc, LLC was
20 discharged in Mr. Clayton's prior chapter 7 bankruptcy case. They further ask the court to rule that
21 the defendant violated the injunctions of 11 U.S.C. §§ 362(a) and 524(a) by filing a claim for the
22 discharged debt in the Claytons' current chapter 13 bankruptcy case. Defendant Roundup does not
23 dispute that the debt was discharged in the prior chapter 7 case but it does dispute that its conduct
24 violated the injunctions provided by sections 362 and 524. In its motion for summary judgment
25 Roundup asks the court to dismiss the case with prejudice and deny all requests for attorney fees,
26 costs and damages. The court decides that the filing of a proof of claim is not an act that violates
27 either the section 362(a) or the section 524(a) injunction and, consequently grants Roundup's motion
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1 for summary judgment.

2 In support of its motion for summary judgment, Roundup has submitted the affidavit of
3 Steven G. Kane, the Operations Manager and Custodian of Records for defendant Roundup. In that
4 affidavit, Mr. Kane describes the business of B-Line and its subsidiary Roundup. More specifically,
5 he details how B-Line acquired the debt that is the subject of the Claytons' complaint and how it
6 processed that debt in its business operation, ultimately assigning the debt to defendant Roundup.
7 These facts are not disputed by the Claytons and the court accepts them for the purposes of the
8 summary judgment motion.

9 Through its routine investigative procedures, B-Line and defendant Roundup learned that Mr.
10 Clayton had filed a prior chapter 13 case, which was ultimately converted to a case under chapter 7,
11 for which he received a discharge. During the pendency of that chapter 13 case, after the petition
12 date and before its conversion to chapter 7, Mr. Clayton incurred the credit card debt that is the
13 subject of the complaint. After the first chapter 13 case was converted to chapter 7, Mr. Clayton's
14 schedules were not amended to add the credit card debt, so the credit card creditor did not receive
15 notice of the conversion of the case from chapter 13 to chapter 7.

16 After Mr. Clayton received his chapter 7 discharge, the credit card creditor sold a portfolio of
17 bankruptcy receivables, including Mr. Clayton's debt, to B-Line with the representation that the
18 debts were not discharged in bankruptcy. B-Line assigned Mr. Clayton's credit card debt to
19 Roundup. Assuming that the credit card debt had not been discharged in bankruptcy, Roundup filed
20 a proof of claim in Mr. Clayton's current chapter 13 case. Through its investigative procedures,
21 Roundup knew about Mr. Clayton's prior chapter 13 case, and its conversion to chapter 7 but
22 Roundup determined that it could collect the credit card debt because the debt had been incurred
23 after the petition date and because the debt had not been scheduled in the converted chapter 7 case.
24 Roundup asserts that it was not aware that an account opened 2 years after the first bankruptcy filing
25 but prior to the conversion of that case to chapter 7 might be discharged. In short, Roundup pleads
26 that it acted in good faith and in ignorance of the law.

1 The acts or conduct violating the stay, according to the Claytons, was the filing of a proof of claim in
2 their current chapter 13 case. In order for the Claytons to receive relief under section 362(a), the act
3 or conduct must have violated one or more of the provisions of section 362(a).

4 Section 362(k)(1) provides that “an individual injured by any willful violation of a stay
5 provided in this section shall recover damages, including costs and attorney fees.” It is the debtor’s
6 burden to establish (1) that the bankruptcy petition was filed, (2) that the debtors are individuals
7 under the automatic stay provisions, (3) that the creditors received notice of the petition, (4) that the
8 creditor’s actions were in willful violation of the stay, and (5) that the debtor suffered damages.
9 Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 7-8 (9th Cir. BAP 2002). If a creditor
10 knows that the automatic stay exists, the creditor bears the risk of all intentional acts that violate the
11 automatic stay regardless of whether the creditor means to violate the automatic stay. Associated
12 Credit Services, Inc. v. Campion (In re Campion), 294 B.R. 313, 318 (9th Cir. BAP 2003).

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14 **Did Roundup violate the automatic stay by filing a proof of claim in Mr. Clayton’s**
15 **current chapter 13 case?**

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17 As a general rule, the automatic stay of section 362 does not operate against the court with
18 jurisdiction over the bankruptcy. This means that actions that are specifically permitted under the
19 Bankruptcy Code do not violate the automatic stay. Arneson v. Farmers Insurance Exchange (In re
20 Arneson), 282 B.R. 883, 893 (9th Cir. BAP 2002); Rein v. Providian Financial Corp., 270 F.3d 895,
21 904-905 (9th Cir. 2001). For example, a creditor can file an adversary lawsuit seeking to establish
22 the amount and dischargeability of a debt, even though the act would otherwise be regarded as a
23 violation of the stay. Likewise a creditor can file a claim for a disputed debt, without violating the
24 automatic stay, even if the claim is ultimately disallowed. Campbell v. Countrywide Home Loans
25 Inc., 545 F.3d 348, 354 (5th Cir. 2008); Zotow v. Johnson (In re Zotow), 432 B.R. 252, 257-8 (9th
26 Cir. BAP 2010); and In re Sammon, 253 B.R. 672, 680-81 (Bankr. D.S.C. 2000).

27 Roundup cites a number of cases embodying the legal principle that section 362(a) does not
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1 stay actions specifically authorized elsewhere in the Bankruptcy Code. With the exception of In re
2 Surprise, 342 B.R. 119 (Bankr. N.D.N.Y. 2006), these cases do not involve a discharged debt, and
3 for that reason, may be factually distinguishable. Unlike the acts that are the subject of those cases,
4 the collection of a discharged debt is an act prohibited by the section 524(a) discharge injunction.
5 Roundup contends that a discharged debt is like a debt barred by the statute of limitations, simply a
6 disputed debt, to which the debtor may object. Roundup further argues that it may file claims for
7 disputed and unenforceable debts so long as it limits its conduct to procedures authorized by the
8 Code. Arguably a discharged debt is similar to a debt barred by the statute of limitations. In both
9 cases, the debts are not extinguished, but their collection by future legal proceedings is barred by
10 statute.

11 In Surprise, a secured creditor repossessed a vehicle belonging to a chapter 13 debtor, who
12 was also a debtor in a prior chapter 7. Id. at 120-121. Like the case before this court, the creditor
13 filed a claim in the debtors' chapter 13 case for a debt that had been scheduled and discharged in a
14 prior chapter 7 case. The Surprise court dismissed the debtor's claim for damages pursuant to
15 section 362(a) and section 524(a), reasoning that the filing of a proof of claim does not constitute a
16 violation of either the automatic or discharge injunction. Rather, the court stated the appropriate
17 remedy available to the debtor was to have filed an objection to the creditor's proof of claim in the
18 chapter 13 case. Id. at 122.

19 As previously stated, the Claytons bear the burden of demonstrating that Roundup's conduct
20 violated one or more of the provisions of section 362(a). In addition to protecting property of the
21 estate, section 362 prohibits all acts to collect prepetition debts against the debtor or property of the
22 debtor. Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc), 912 F.2d 1162, 1166 (9th Cir.
23 1990). Filing a claim in a subsequent chapter 13 case, even a claim for a discharged debt, is not an
24 act that personally targets the debtor or the debtor's property. Rather, its purpose is to obtain a
25 distribution from the chapter 13 bankruptcy estate. The language of the section 362(a) injunction
26 does not encompass this act. Moreover, the Bankruptcy Code allows creditors to assert any claim,
27 even a claim that is contingent, unmatured, or disputed. 11 U.S.C. §§ 101(5), 501(a). If a creditor
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1 files a claim that is disputed and unenforceable, the Code authorizes the debtors to object to the
2 claim. 11 U.S.C. § 502. And, in appropriate circumstances, other remedies may be available. Fed.
3 R. Bankr.P. 9011; In re Andrews, 394 B.R. 384, 387-88 (Bankr. E.D.N.C. 2008). For these reasons,
4 the court concludes Roundup did not violate the automatic stay by filing a proof of claim in Mr.
5 Clayton's current chapter 13 case.

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7 **Did Roundup violate the discharge injunction of section 524(a) by filing a proof of claim**
8 **in Mr. Clayton's chapter 13 case?**

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10 Much like the automatic stay, the discharge injunction of section 524(a)(2) enjoins creditors
11 from attempting to collect from the debtor or from the debtor's assets any debts that have been
12 discharged. 11 U.S.C. § 524(a)(2). Watson v. Shandell (In re Watson), 192 B.R. 739, 749 (9th Cir.
13 BAP 1996). A violation of the discharge injunction is punished by contempt of court. Espinosa v.
14 United Student Aid Funds, Inc. (In re Espinosa), 553 F.3d 1193, 1200 (9th Cir. 2008) affirmed 130
15 S.Ct. 1367 (U.S. 2010). To justify sanctions, the moving party must prove that the creditor (1) knew
16 the discharge injunction was applicable and (2) intended the actions which violated the injunction.
17 Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 107 (9th Cir. 2006). "The standard for
18 finding a party in civil contempt is well settled: the moving party has the burden of showing by clear
19 and convincing evidence that the contemnors violated a specific and definite order of the court. The
20 burden then shifts to the contemnors to demonstrate why they were unable to comply." F.T.C. v.
21 Affordable Media, 179 F.3d 1228, 1239 (9th Cir. 1999). If the Claytons satisfy their burden of proof,
22 this court can impose upon Roundup sanctions for civil contempt, which may consist of remedial and
23 compensatory, but not punitive, sanctions. Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1193
24 (9th Cir. 2003).

25 Initially the court must address whether Roundup knew the discharge injunction was
26 applicable, which is the first element of the Claytons' claim against Roundup for violation of the
27 discharge injunction. Roundup is a national organization that purchases bankruptcy receivables, for
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1 which it files proofs of claims. Because Roundup deals in large volumes, it has established
2 appropriate procedures for acquiring relevant information about the receivables that it has purchased.
3 Before it filed its claim in the Claytons' chapter 13 case, Roundup knew about Mr. Clayton's prior
4 bankruptcy cases and the petition, conversion, and discharge dates. Roundup also knew that the
5 credit card debt assigned to it was incurred after the petition date but prior to the discharge date.
6 Roundup decided to file a claim because it determined that the unsecured debt was not discharged.
7 In Roundup's words: "although defendant was aware of the discharge injunction from the chapter 7
8 bankruptcy case in 2005, defendant did not know about 11 U.S.C. § 348, in which debts incurred
9 post petition but prior to conversion to chapter 7 are automatically discharged without further
10 notice."

11 Roundup's defense is honest but futile. Receipt of notice of the debtor's discharge is
12 sufficient to establish the knowledge element of the Claytons' claim. The intent of Roundup is
13 irrelevant. "A creditor is not free to violate the discharge injunction because it has doubts as to the
14 validity of the discharge." Espinosa, 553 F.3d at 1205 n. 7. Here, Roundup concedes that it had
15 actual knowledge of the discharge injunction but pleads that it did not intend to violate the injunction
16 and offers its ignorance of the law as an excuse. Actual knowledge of the injunction and a volitional
17 act that violates the injunction is sufficient to trigger sanctions. Hardy v. United States (In re Hardy),
18 97 F.3d 1384, 1390 (11th Cir. 1996).

19 The crucial question is whether the act of filing a proof of claim violates the injunction.
20 Roundup responds to the Claytons' claim under section 524(a) with the identical arguments that it
21 asserted against their section 362(a) claim. The section 524(a) injunction prohibits only activities
22 outside of the bankruptcy court. In Roundup's words, "... **the Bankruptcy Code permits creditors**
23 **to file claims that are disputed and unenforceable claims for any reason, because the debtors**
24 **have the affirmative duty to decide which claims to present to the bankruptcy court in an**
25 **objection to claim proceeding.**" (emphasis in original). The Court questions the scope and even the
26 validity of this assertion. See B-Real, LLC v. Chaussee (In re Chaussee), 399 B.R. 225, 240 (9th
27 Cir. BAP 2008). Section 524(a) ensures that a discharge will be effective by protecting the debtor
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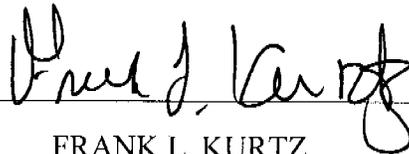
1 and the debtor's post discharge property from the collection of discharged debts. Post petition
2 property, such as the debtor's earnings, could be the very property that becomes the property of the
3 subsequent bankruptcy estate. The court is troubled by the proposition that this property loses the
4 protection of the discharge injunction, once it becomes property of a subsequent bankruptcy estate.
5 In this regard the court emphasizes that section 524(a) provides for broad protection against not only
6 legal proceedings, but also other acts to collect a discharged debt as a personal liability of the debtor.
7 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 524.02 [2] 16th ed. 2010.

8 Despite these reservations, the court concludes its analysis of the Claytons' section 362(a)
9 claim is applicable to their claim for violation of the discharge injunction. In order for the court to
10 find that there was a violation of the injunction, the Claytons must establish the violation of a
11 specific court order. Like the section 362(a) injunction, the language of the section 524(a) injunction
12 does not encompass the act of filing a claim against a bankruptcy estate. Additionally, if a creditor
13 files a disputed and unenforceable claim, the Bankruptcy Code authorizes the debtor to object to the
14 claim. If a creditor files a claim that abuses the judicial process, bankruptcy courts have both
15 statutory and inherent authority to sanction the conduct. 11 U.S.C. § 105(a); In re Chaussec, 399
16 B.R. at 240; and Countrywide Homes Inc. v. McDermott, 426 B.R. 267, 274 (N.D. Ohio 2010). For
17 the same reasons stated in the previous section, the court concludes Roundup did not violate the
18 discharge injunction of section 524(a) by filing a proof of claim in Mr. Clayton's Chapter 13
19 bankruptcy case.

20 In summary, this court has jurisdiction over the debtors' claims that the creditor violated the
21 injunctions provided by sections 362(a) and 524(a). 28 U.S.C.A. §§ 1257, 1334(b). The court
22 concludes that defendant Roundup has satisfied its burden of proof under Rule 56(c) that there is no
23 genuine issue of material fact and the defendant is entitled to judgment as a matter of law. The court
24 decides Roundup did not violate the automatic stay by filing a proof of claim in Mr. Clayton's
25 current Chapter 13 case. Accordingly the Claytons' claim for violation of the automatic stay is
26 dismissed. Likewise, the court concludes that defendant Roundup has satisfied its burden of proof
27 under Rule 56(c) that there is no genuine issue of material fact and the defendant is entitled to
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1 judgment as a matter of law holding Roundup did not violate the discharge injunction of section
2 524(a). The Claytons' claim for violation of the discharge injunction is dismissed. For the reasons
3 stated in this opinion, Roundup's motion for summary judgment is granted.
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7 Done this 12 day of October, 2010
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13 FRANK L. KURTZ
14 BANKRUPTCY JUDGE
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