



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
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The following constitutes the order of the Court.

Signed August 12, 2004.

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

JAN McLENDON MOSS,

DEBTOR(S).

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CASE NO. 00-30934-SAF-7

MEMORANDUM OPINION AND ORDER

Donald H. McDaniel, trustee of a testamentary spendthrift trust of which Jan McLendon Moss, the debtor, is a beneficiary, moves the court for the entry of an order discharging the debtor from her pre-bankruptcy petition debts. Diane G. Reed, the Chapter 7 trustee of Moss's bankruptcy estate, acknowledges that Moss should receive a discharge but requests that the court exclude a judgment from the discharge. The court conducted an evidentiary hearing on the motion on August 10, 2004.

The determination of the discharge of a debtor constitutes a core matter over which this court has jurisdiction to enter a

final order. 28 U.S.C. §§ 157(b)(2)(J) and 1334. This memorandum opinion contains the court's findings of fact and conclusions of law. Bankruptcy Rules 7052 and 9014.

On January 29, 2001, Reed filed a complaint objecting to Moss's discharge. Adversary proceeding no. 01-3039. By order entered December 30, 2003, the court dismissed the adversary proceeding. With the dismissal of the complaint, Moss is entitled to her discharge. 11 U.S.C. § 727 (a); Bankruptcy Rule 4004.

Reed contends that a state court judgment must be excluded from the discharge. Reed intervened in the case of Littleton v. Tri-State Theatres, et al., case no. DV98-05802-H, in the 160th Judicial District Court, Dallas County, Texas, to prosecute an avoidance claim under 11 U.S.C. § 544. The state court entered a judgment based on a jury verdict. According to the judgment, "[t]he jury found that Moss had entered into a transfer that was fraudulent as to Moss's creditor Littleton. The jury further found that [the other defendants] had acted in good faith and given reasonably equivalent value in exchange for the transfer. Based on the jury's finding that Moss engaged in a fraudulent transfer, Diane Reed, Chapter 7 trustee in bankruptcy, is entitled to judgment against Moss for the principal sum of \$575,000 being the amount of Moss's fraudulent transfer, plus . . . interest . . ." Thereupon, the state court entered judgment

that Reed "shall have and recover of and from Janette McLendon Moss the sum of \$776,647.45, plus . . . interest . . ."

Reed asserts that the judgment constitutes a post-petition obligation of Moss not covered by her discharge. McDaniel responds that the transfer occurred pre-petition, making the money judgment the liquidation of a pre-petition claim and resulting in the discharge of the judgment.

Reed intervened in the state court litigation to seek to avoid a transfer by Moss avoidable under state law. 11 U.S.C. § 544(b). A trustee may avoid a transfer by the debtor under 11 U.S.C. § 544(b). The discharge of the debtor has no impact on an avoided transfer. After a transfer has been avoided, the trustee may recover, for the benefit of the bankruptcy estate, the property transferred, or, if the court so orders, the value of the property, from transferees. 11 U.S.C. § 550(a). The discharge of the debtor has no impact on a judgment entered under § 550(a).

The state court judgment is ambiguous. The state court complaint alleges that Moss made a fraudulent transfer when she released the obligation of other defendants on a note. The complaint alleges that the transfer was made with the subjective intent of Moss to hinder, delay or defraud one of her creditors or, alternatively, made for less than reasonably equivalent value when she was insolvent. The judgment finds that Moss made a

fraudulent transfer but does not adjudicate whether the transfer was made with the subjective intent to defraud or was constructively fraudulent. The judgment does not reflect or refer to a finding of intent to defraud nor does it reflect or refer to a finding of insolvency. The judgement does recognize that the jury found that the other defendants provided reasonably equivalent value for the transfer. With that finding and without a finding of subjective intent, this court cannot ascertain the basis for avoiding the transfer. And, indeed, the judgment does not declare the transfer void. But the judgment provides that Reed recover from Moss \$575,000, being the amount of Moss's fraudulent transfer. The state court judgment refers to Moss's transfer, implying that Moss was the transferor. Section 550 authorizes the recovery of a money judgment for the value of the transferred property from a transferee. Reed reads the judgment as establishing that Moss was both a transferor and transferee. Neither § 544(b) nor § 550 authorizes a judgment against a debtor as a transferor. Rather, in addition to avoiding the transfer and providing for recovery from transferees, the Bankruptcy Code provides under § 727(a)(2) that the debtor not be discharged if the debtor makes a transfer with the intent to hinder, delay or defraud creditors. 11 U.S.C. § 727(a)(2).

This court may not reform or clarify the judgment. This court may not act as an appellate court concerning the judgment.

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923).

To determine whether a debt is dischargeable, Reed must obtain a judgment under 11 U.S.C. § 523. Section 727(b) explains that debts are discharged "[e]xcept as provided in section 523." An adversary proceeding is required to determine the dischargeability of a debt under § 523 or to obtain a declaratory judgment relating to the discharge of a debt. Bankruptcy Rule 7001(6) and (9). Reed has not filed an adversary proceeding to determine if the judgment is dischargeable. The court cannot consider on this motion whether the judgment is dischargeable or constitutes a judgment against a transferee under § 550 of a transfer avoided under § 544.

Accordingly, as Moss is entitled to a discharge and Reed's requested relief may not be adjudicated on this motion,

IT IS ORDERED that the motion of Donald H. McDaniel, trustee of a testamentary spendthrift trust of which Jan McLendon Moss is a beneficiary, is **GRANTED**. The clerk of court shall, on behalf of the court, enter a discharge order and provide notice of the entry of the order. Bankruptcy Rule 4004(e) and (g).

###END OF ORDER###