

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Opinions for Posting

Will this opinion be Published? No

Bankruptcy Caption: In re Tiffany Armstrong

Bankruptcy No. 14-18107

Date of Issuance: November 7, 2014

Judge: Judge Jacqueline P. Cox

Appearance of Counsel:

Attorney for Debtor: Mr. Frank G. Cortese

Attorney for Oasis Legal Finance, LLC: Mr. Nathan E. Polum

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re	Bankr. No. 14-18107
Tiffany A. Armstrong,	Chapter 7
Debtor.	Judge Jacqueline Cox

**Order on Oasis Legal Finance, LLC’s Motion to Alter or Amend Order
Denying Motion for Reconsideration (Dkt. No. 31)**

I. Facts and Background

On May 13, 2014, the Debtor, Tiffany A. Armstrong (“Debtor”), filed a petition for relief under chapter 7 of the Bankruptcy Code. On August 15, 2014, Creditor Oasis Legal Finance, LLC (“Oasis”) entered into a reaffirmation agreement with the Debtor regarding cash advances made to her prepetition in the amount of \$4,125. The Reaffirmation Cover Sheet, Official Form 27, at Paragraph 6, asks whether the creditor asserts that the debt is nondischargeable and if so, the creditor is instructed to attach a declaration setting forth the nature of the debt and the basis for the contention that the debt is nondischargeable. Oasis answered that the debt was nondischargeable, but did not attach a declaration explaining the basis for that contention.

The Debtor has monthly income of \$1640. Her monthly expenses are \$1815. For that reason a presumption of undue hardship arose herein. Although the Debtor’s attorney certified that a presumption of undue hardship arose herein regarding the Oasis reaffirmation agreement, he certified that, in his opinion, the Debtor was able to make the required payments.

The Court was concerned about whether the debt was nondischargeable since it had been scheduled as unsecured. Unsecured nonpriority debts are fully dischargeable under chapter 7 of the Bankruptcy Code. *See* Debtor’s Amended Schedule F of Creditors Holding Unsecured Nonpriority Claims, Dkt. No. 19, page 7.

This Court set the matter for hearing. The Court was told that the debt was not

dischargeable because it was incurred within 70 days of the bankruptcy filing, making it presumptively nondischargeable under 11 U.S.C. § 523(a)(2)(C)(i)(II). That Bankruptcy Code section allows a creditor to challenge the discharge of cash advances in excess of \$925 taken out within 70 days before bankruptcy relief is sought. However, the entire \$4,125 amount was not taken out during the relevant 70-day period. The Court was told that only \$925 in cash advances were extended to the Debtor during the relevant period. If allowed to stand, the reaffirmation agreement would require the Debtor to repay Oasis \$4,125.

Oasis has not filed an adversary proceeding challenging the dischargeability of its debt. The reaffirmation agreement represents a settlement of a potential dischargeability action. However, Oasis may not have grounds to seek a judgment excepting all of the \$4,125 debt from discharge when only \$925 in cash advances were received by the Debtor during the relevant 70-day period.

On September 3, 2014, the Court entered an Order explaining its disapproval of the reaffirmation agreement.

II. Discussion

First Motion to Reconsider

Oasis filed a Motion for Reconsideration of the Court's September 3, 2014 Order. That motion included the affidavit of its in-house attorney who declared that the failure to file the required declaration was inadvertent. *See* Oasis Legal Finance, LLC's Motion for Reconsideration of Order Denying Reaffirmation Agreement, Dkt. No. 27, Exhibit A. At the hearing of that motion the Court was told that \$1,025 (not \$925 as related previously) of the debt was incurred by the Debtor during the relevant 70-day period. The Court entered an order on October 7, 2014 denying that motion.

Oasis pointed out that its claim was not dischargeable because the Debtor did not initially schedule its claim and that some of the cash advances were obtained by false pretenses. To have debts declared not dischargeable because the creditor's claim was not properly scheduled in the bankruptcy case - capable of attack under 11 U.S.C. § 523(a)(3) - or because the debtor fraudulently incurred the obligation - capable of attack under 11 U.S.C. § 523(a)(2), creditors have to prosecute an adversary proceeding, a civil action, which allows accused debtors to conduct discovery and to plead and to hopefully prove a defense. Oasis has not sought a declaration that its debt is not dischargeable. The Court refused to find a debt not dischargeable based on a creditor's allegation in a motion when Federal Rule of Bankruptcy Procedure 7001(6) requires that dischargeability actions be pursued by way of an adversary proceeding.

The Court commented in its October 7, 2014 Order that Oasis' motion stated that its claims were generally secured. The Court noted that Illinois law prohibits the imposition of liens on workers' compensation awards.

The Court noted that Section 524(m) of the Bankruptcy Code provides that a reaffirmation agreement is presumed to impose an undue hardship on a debtor whose monthly income is less than the debtor's monthly expenses. Bankruptcy courts are required to review cases where the presumption arises. The presumption may be rebutted in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments agreed upon. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the reaffirmation agreement, making it unenforceable.

11 U.S.C. § 524(m)(1). "When a reaffirmation agreement discloses that a debtor's monthly expenses exceed monthly income, a presumption of undue hardship arises and, unless the debtor is able to rebut the presumption by additional written submissions, a hearing must be held to determine whether the presumption can be rebutted and the agreement made enforceable." *In re Delaney*, 2011 WL 1749596, at *3 (Bankr. C.D. Ill. 2011). Other than the Debtor's vague written submission, no evidence has been presented to date to rebut the presumption. She indicated that she would be able to make the payments upon her return to work. She did not identify an additional source of funds from which the payments could be made. The Court's disapproval rendered the reaffirmation agreement unenforceable. The debt was discharged with the debtor's other unsecured debts.

October 21, 2014 Motion to Alter or Amend Order Denying Motion for Reconsideration

In this latest motion, Oasis asks the Court to alter or amend pages 3-4 of its October 7, 2014 Order. That Order denied Oasis Legal Finance, LLC's Motion for Reconsideration because it did not point out manifest errors of law made by the Court or present newly discovered evidence.

This latest motion complains that the Court speculated that Oasis may have attempted to obtain a lien on the Debtor's anticipated workers' compensation award because the Court did not take evidence or hear argument on the issue of whether Oasis' claim was unsecured. Attached to the latest motion is the declaration of Oasis' Chief Operating Officer, Colin Lawler, Esq., who asserts that Oasis has never attempted to obtain, record or perfect a lien or security interest in the Debtor's award. The declaration does not include copies of the relevant loan documents, invoices and other related documents on which Mr. Lawler bases his assertions.

The Court commented at pages 3-4 on Oasis' use of the word secured in generally describing its business model:

2. Oasis is a licensed lender under the Illinois Consumer Installment Loan Act since 2002. In Illinois, Oasis provides cash advances and loans to consumers that are payable in equal monthly installments over a two-year term secured by the potential proceeds of his/her current and pending personal injury legal claim. Oasis also provides consumers the option to defer paying any and all such monthly installments until a settlement or judgment is realized and his or her attorney receives the funds. *See Oasis Legal Finance, LLC's Motion for*

Reconsideration of Order Denying Reaffirmation Agreement. Paragraph 2, (Dkt. No. 27).

The Court did not speculate that Oasis' debt was secured; the Court commented on Oasis' general assertion that its claims are secured by the potential proceeds of borrowers' current or pending personal injury claims. Oasis' assertion that its claims are secured prompted the Court's examination of Illinois law regarding whether workers' compensation awards may be attached by way of a lien. The Court discovered that Illinois law prohibits the imposition of liens on workers' compensation awards. *See* 820 ILCS 305/21 (2012) which states:

No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages, except the beneficiary or beneficiaries of a deceased employee who was a member or annuitant under Article 14 of the "Illinois Pension Code"¹ may assign any benefits payable under this Act to the State Employees' Retirement System.

The Court did not speculate or make a finding that Oasis violated Illinois law prohibiting liens on workers' compensation awards. The Court asked a question: "Is Oasis trying to enforce its debt as if it possesses a lien by tying its enforcement to the Debtor's recovery?" *See* Order on Oasis Legal Finance, LLC's Motion for Reconsideration. Dkt. No. 28, p. 3.

The Court also pointed out that according to the reconsideration motion repayment was conditioned on the Debtor's receipt of the workers' compensation award. The proposed reaffirmation agreement provided:

For good and valuable consideration, Oasis agreed to waive all of the interest and fees accrued on the pre-petition advances, as well as continue to defer payment if and until a settlement or judgment is realized from her underlying workers' compensation claim and her attorney receives the funds. Oasis further agreed to not collect if there are insufficient funds to from [sic] the potential [sic] proceeds of her settlement or judgment - making the pre-petition loans nonrecourse loans so as to guarantee the Debtor has sufficient funds in with [sic] to repay the pre-petition debts.

The Court commented that this provision may give Oasis a lien on the Debtor's workers' compensation award in violation of the Workers' Compensation Act. The Court made this statement because the provision ties Oasis' recovery to Debtor's receipt of the award by stating

¹40 ILCS 5/14-101, et seq.

that it would defer payments until the Debtor receives the award. The Court acknowledges that the loan would become nonrecourse if the recovery is insufficient. The problem, however, is that Oasis' recovery under the reaffirmation agreement is tied in some fashion to her recovery/award. This may be prohibited by Illinois law.

Federal Rule of Bankruptcy Procedure 9023 provides that Federal Rule of Civil Procedure 59 applies in cases under the Bankruptcy Code. "Rule 59(e) allows a court to alter or amend a judgment only if the petitioner can demonstrate a manifest error of law or present newly discovered evidence." *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008). Oasis has not shown that the Court made a manifest error of law. Nor has Oasis present newly discovered evidence. In the disputed order the Court commented on Oasis' general assertion that its claims are secured, which generally means that a creditor has a lien. The Court also commented that the reaffirmation agreement that it disapproved was structured in a way that appeared to give Oasis access to the Debtor's workers' compensation award as if it was secured in violation of Illinois law.

III. Conclusion

The Debtor is not obligated to repay Oasis. The debt owed Oasis has been discharged. *See* October 20, 2014 Discharge Order and Certificate of Service of Order of Discharge, Dkt. Nos. 30 and 31. Oasis has not sought to have its debt declared to be not dischargeable. The debtor is free to dispose of her workers' compensation award without regard to Oasis' claim. Attempts to collect on the discharged prepetition debt owed Oasis may amount to a wilful violation of the discharge injunction of 11 U.S.C. § 524. *In re Vazquez*, 221 B.R. 222 (Bankr. N.D. Ill. 1998).

Oasis Legal Finance, LLC's Motion to Alter or Amend Order Denying Motion for Reconsideration is **DENIED**.

Dated: November 7, 2014

ENTER:

Jacqueline P. Cox
U.S. Bankruptcy Judge