

United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Adversary Caption: *In* Schwartzberg v. Tuteja et al

Adversary No.: 21 A 00075

Date of Issuance: August 26, 2021

Judge: Deborah L. Thorne

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
)	Case No:19-18325
Nathan Schwartzberg,)	Chapter 7
Debtor)	
)	
)	
Nathan Schwartzberg)	
)	Adversary Proceeding No. 21-00075
)	
Plaintiff)	
)	
V.)	
)	
Harnit Tuteja, Individually,)	
And as Trustee of TSK Trust,)	
And TSK Trust,)	Honorable Deborah L. Thorne
)	
Defendants)	
)	

ORDER DENYING MOTION TO DISMISS COMPLAINT

This matter comes before the court on Harnit Tuteja’s Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons stated below, the motion is denied.

BACKGROUND

On June 27, 2019, Nathan Schwartzberg, the plaintiff and debtor, filed a voluntary petition in this Court under chapter 7. The Trustee filed a no asset report, and Schwartzberg received his discharge pursuant to a discharge order entered on April 24, 2021. On May 4, 2021, Schwartzberg filed a complaint that included two causes of action: one alleging violation of 11 U.S.C. § 105¹,

¹ Schwartzberg also alleges in passing that Defendants’ conduct constitutes a violation of 11 U.S.C. § 506. Because that allegation is not sufficiently developed or taken up by the parties, the court ignores it for purposes of this Order.

and one alleging violation of 11 U.S.C. § 524(a) and the discharge order. Harnit Tuteja, individually and as Trustee of TSK Trust, and TSK Trust (together, “Defendants”) have moved to dismiss this complaint under Rule 12(b)(6). Defendants are creditors in this bankruptcy case and have received notice of the proceedings.

Schwartzberg alleges that—despite Tuteja having notice of the bankruptcy proceedings and having the benefit of counsel’s advice—Tuteja, for himself and as authorized agent for the other defendants, made repeated phone calls to Schwartzberg during the bankruptcy proceeding. On these calls, Tuteja stated that unless Schwartzberg agreed to reaffirm the debt, Tuteja was going to "make [Schwartzberg’s] life miserable" and "drag out" the proceeding. These phone calls allegedly began in the summer of 2019 and continued through at least March 17, 2020. Schwartzberg elected not to seek judicial relief or damages at that time because of his desire to gain a fresh start and complete his bankruptcy.

About a year after receiving his discharge, Schwartzberg allegedly encountered Tuteja. Tuteja allegedly approached Schwartzberg and told him that “you need to start making payments to us ... we have some things in the works,” in reference to debt that had been legally discharged by the discharge order. Tuteja further stated that unless Schwartzberg began making payments to him, he would “sue [Schwartzberg’s] wife.” Tuteja also said he wanted to "see a substantial payment next week," and reiterated that "we are in the works of suing your wife unless you start making substantial payments to us and sign a payment agreement." Schwartzberg also alleges that Tuteja admitted that he was fully aware of the discharge and that he was barred from suing Schwartzberg, because Tuteja stated that he would sue Schwartzberg’s wife "because we can't sue you.”

STANDARDS OF LAW

To survive a Rule 12(b)(6) motion, a complaint must “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, (2007)); *Katz-Crank v. Haskett*, 843 F.3d 641, 646 (7th Cir. 2016) (quoting *Twombly*, supra). A complaint satisfies this standard when its factual allegations “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555-56; *see also Atkins v. City of Chicago*, 631 F.3d 823, 832 (7th Cir. 2011) (“[T]he complaint taken as a whole must establish a nonnegligible probability that the claim is valid, though it need not be so great a probability as such terms as ‘preponderance of the evidence’ connote.”); *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404 (7th Cir. 2010) (“[P]laintiff must give enough details about the subject matter of the case to present a story that holds together.”).

When deciding a motion to dismiss under Rule 12(b)(6), the court takes all facts alleged by the plaintiff as true and draws all reasonable inferences from those facts in the plaintiff's favor, although conclusory allegations that merely recite the elements of a claim are not entitled to this presumption of truth. *Katz-Crank*, 843 F.3d at 646 (citing *Iqbal*, 556 U.S. at 662, 663); *Virnich v. Vorwald*, 664 F.3d 206, 212 (7th Cir. 2011). Thus, the question “is not whether [the pleader] might at some later stage be able to prove [facts alleged]; the question is whether [it] has adequately asserted facts (as contrasted with naked legal conclusions) to support [its] claims.” *Id.* at 1129. Expressly, “[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Iqbal*, 556 U.S. at 678, 129 S. Ct. 1937 (quoting *Twombly*, 550 U.S. at 555 (2007)).

DISCUSSION

Section 524(a)(2) of the Bankruptcy Code, which governs the effect of the discharge, provides, in relevant part:

(a) A discharge in a case under this title—
(2) operates as an injunction against ... an act, to collect, recover or offset any such debt as a personal liability of the debtor

11 U.S.C. § 524(a). The protections afforded by the discharge injunction are very broad, effectuating a financial fresh start for the debtor and ensuring that the debtor will not be pressured in any way to repay debts which have been discharged. *In re Nassoko*, 405 B.R. 515 (Bankr. S.D.N.Y. 2009). Because of its fundamental importance, the discharge injunction requires a combination of respect and deference by the debtor's prepetition creditors. In the Seventh Circuit, civil contempt is the proper remedy for a creditor's violation of the discharge injunction. *Cox v. Zale Delaware, Inc.*, 239 F.3d 910, 917 (7th Cir. 2001).; *In re Williams*, 368 B.R. 744 (Bankr.N.D.Ind.2007); *In re Torres*, 117 B.R. 379 (Bankr. N.D. Ill. 1990).

A creditor may be found in contempt if it (a) knew of the discharge and (b) intended the actions that violated the discharge. *In re Hardy*, 97 F.3d 1384, 1390 (11th Cir. 1996); *In re Pincombe*, 256 B.R. 774, 783 (Bankr. N.D. Ill. 2000). A creditor's deliberate intent to violate the injunction is not necessary. *In re Manzanares*, 345 B.R. 773, 790–91 (Bankr. S.D. Fla. 2006). If a creditor's conduct violates the injunction, good faith is no defense. *In re Elias*, 98 B.R. 332, 337 (N.D. Ill. 1989); *In re Cherry*, 247 B.R. 176, 187 (Bankr. E.D. Va. 2000). The burden is on the petitioner to prove the violation “by clear and convincing evidence.” *In re Ryan*, 100 B.R. 411, 417 (N.D. Ill. 1989).

A bankruptcy court can impose upon a creditor who violates the § 524 injunction sanctions for civil contempt. *Torres*, 117 B.R. at 382. The court can impose upon a creditor who violates

the injunction through civil contempt remedial and compensatory, but not punitive, sanctions. *Id.* Compensatory sanctions can include attorney's fees. *In re Matthews*, 184 B.R. 594, 599 (Bankr. S.D. Ala. 1995); *Kolb v. United States (In re Kolb)*, 137 B.R. 29 (N.D. Ill. 1992).

Here, Schwartzberg clearly alleges specific conduct by Tuteja that would violate the discharge. Tuteja made statements towards Schwartzberg that were an effort to collect on a debt that was discharged. Tuteja told Schwartzberg that "you need to start making payments to us ... we have some things in the works." He stated further that he wanted to "see a substantial payment next week," and stated further that "we are in the works of suing your wife unless you start making substantial payments to us and sign a payment agreement." Tuteja also made statements that indicated he was aware that the debts were discharged, yet he continued to try to intimidate Schwartzberg with threats of suing his wife. He made threats of suing Schwartzberg's wife because he couldn't bring an action against Schwartzberg due to the discharge injunction. At this stage of the adversary proceeding, these specific allegations suffice to survive a Rule 12(b)(6) motion.

CONCLUSION

Tuteja's motion to dismiss the complaint is denied.

Date: _____

Honorable. Deborah L. Thorne
United States Bankruptcy Judge