

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

THOMAS J. MANZI : BK No. 09-12612
ELENA F. MANZI : Chapter 7
Debtors

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ORDER DENYING MOTION TO REOPEN

APPEARANCES:

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BEFORE ARTHUR N. VOTOLATO United States Bankruptcy Judge

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Heard on Debtor, Thomas J. Manzi's Motion to Reopen this Chapter 7 case for a determination of dischargeability of certain of his debts, and for an injunction preventing the collection of said debts. Creditor, the State of Rhode Island ("State") opposes the relief sought by Manzi. At the hearing the Court, unwittingly, reopened the case for the specific purpose of receiving memoranda regarding the dischargeability of debts under 11 U.S.C. § 523(a)(7).¹ On sua sponte reconsideration and in recognition of the error of my ways, I will reverse my earlier inclination, and rather than addressing the merits, Order that the Motion to Reopen is **DENIED**, ON PROCEDURAL GROUNDS.

Nevertheless, the following discussion of the merits of the dispute is included here because: (1) the work was completed before I realized that it wasn't necessary, and I hate to waste anything; and (2) as an alternate ground for denial of relief, in the event that on appeal it is determined that this Court's ruling on procedural grounds was erroneous.

FACTS AND TRAVEL

¹ Proceedings to "determine the dischargeability of a debt" or "to obtain an injunction or other equitable relief" are commenced via an adversary proceeding. Fed. R. Bankr. P. 7001(6), (7).

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Debtors² filed a joint Chapter 7 case on July 3, 2009, and listed debts to the Rhode Island "Contractor's Registration Board-\$26,000" ("the Board"), to creditor "Josephine Mulvic-Contract Damages-\$32,000", and to creditor "Mary Lou Coningford-\$16,000". These debts arose from complaints filed with the Board³ by Mulvick and Coningford regarding the value of work performed by Manzi for both creditors. In decisions dated February 2, 2007 (Mulvick), and May 3, 2007 (Coningford), the Board ruled in favor of both claimants, ordered restitution to be paid to them, and assessed fines against Manzi *payable to the Board*. When Manzi failed to comply with the Board's orders, the State initiated *criminal* enforcement proceedings under R.I. Gen. Laws § 5-65-19 in the Rhode Island District Court. Manzi pled *nolo contendere* to both charges, and on September 21, 2007, the District Court sentenced him to one year of probation on each charge, ordered him to pay a \$10,000 fine to the Board on each charge, and restitution to both claimants in the amounts originally ordered by the Board. Post-discharge, per order of the Rhode Island district court, Manzi pays a minimum of \$300 every three months, through the

² The instant claims are solely against Thomas Manzi.

³ Established under R.I. Gen. Laws § 5-65-1, et seq.

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Administrative Office of State Courts, pursuant to R.I. Gen. Laws § 12-19-34, for distribution to the claimants.

DISCUSSION

Section 523(a)(7) makes nondischargeable, a debt that "is for a fine, penalty or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss."

In the go-to case on this provision of the Bankruptcy Code, *Kelly v. Robinson*, 479 U.S. 36, 107 S.Ct. 353 (1986), the debtor contended that a restitution order imposed after she pleaded guilty in a criminal action, was discharged in the Chapter 7 case. Based on Connecticut state law, the bankruptcy and districts courts held the debt nondischargeable under § 523(a)(7), but on appeal the Second Circuit Court of Appeals reversed. The Supreme Court reversed the Second Circuit, saying

a sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the State. Those interests are sufficient to place restitution orders within the meaning of § 523(a)(7).

479 U.S. at 53; 107 S.Ct. at 362-363.

Debtor's counsel tries (in vain) to evade the ruling of the Supreme Court, arguing that *Kelly* does not apply here, because although it is classified as a criminal proceeding, the nature of

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Manzi's offenses was civil in nature, i.e., "breach of contract." Debtor's Memorandum to Enjoin, at 2-6. I disagree. Statutory criminal fraud is not a prerequisite for a debt to be found nondischargeable under § 523(a)(7). *Whitehouse v. Laroche*, 277 F.3d 568, 573 (1st Cir. 2002)(§ 523(a)(7), "applies both to civil and criminal penalties ... [as long as they] ... serve some 'punitive' or 'rehabilitative' government aim, rather than a purely compensatory purpose," citing *Kelly*).⁴ Moreover, Rhode Island has specifically reserved the option to remedy non-compliance with the Board's orders through its own criminal court process, R.I. Gen. Laws § 5-65-19 ("Any person who violates a final order of the board ... is deemed guilty of a misdemeanor, and, upon conviction, shall be imprisoned for a term not exceeding one year", and criminal enforcement is exactly what was happening here when the state district court accepted Manzi's *nolo* plea to the State's *criminal complaint*, and imposed sentence. Debtor's Exhibits C & D.

Manzi's alternate contention (also not a winner) is that the restitution order is not "payable to and for the benefit of a

⁴ On even more conservative facts, and not necessarily my favorite example, see *Richmond v. New Hampshire Supreme Court Committee on Professional Conduct*, 542 F.3d 913 (1st Cir. 2008) (holding cost assessment in attorney disciplinary matter nondischargeable, although not criminal).

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governmental unit," as required by § 523(a)(7). This argument is undercut by his admission that "pursuant to RIGL §12-19-34, Debtor makes his monthly payment to the Administrative Office of the State Courts, and the monies are then distributed to the claimants." Debtor's Memorandum at 8. So, Manzi's payments, literally, are "payable to ... a governmental unit," with the same result as in *Kelly*, where "restitution is forwarded to the victim," 479 U.S. at 52, 107 S.Ct. at 362, and in *Richmond, supra*. The Supreme Court also stated in *Kelly* that "restitution orders imposed in such [criminal] proceedings operate 'for the benefit' of the State." *Kelly*, 479 U.S. at 53; 107 S.Ct. at 363.⁵ Finally, in a case dealing with § 523(a)(7), the First Circuit in *Richmond* did not adopt the restrictive view of *Kelly* that the Debtor urges.

⁵ Dissenting in *Kelly*, Justice Marshall noted that it was only by happenstance that the restitution was "for the benefit of a governmental unit" as required by § 523(a)(7), because the victim of the larceny was also a governmental agency. He also reasoned that the majority was creating a rule more expansive than the words of the statute. 479 U.S. fn.3 at 56; 107 S.Ct. at 364. Notwithstanding his thoughtful analysis, Justice Marshall's opinion on this issue was rejected by the majority, which adopted the broader view that restitution orders are "payable to and for the benefit of a governmental unit" even when the funds ultimately go to a victim. The majority's holding, of course, is controlling in this Court.

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For the foregoing reasons the Debtor's Motion to Reopen is
DENIED.

Entered.



Arthur N. Votolato
U.S. Bankruptcy Court

Entered on docket: 4/18/12

