

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

VIVIAN REYES : BK No. 96-10402
Debtor Chapter 7
VIVIAN REYES :
Plaintiff
vs. : A.P. No. 98-1064

FCC NATIONAL BANK :
Defendant
- - - - - -x

TITLE: *Reyes v. FCC Nat'l Bank (In re Reyes)*

CITATION: 238 B.R. 507 (Bankr. D.R.I. 1999)

DECISION AND ORDER

APPEARANCES:

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BEFORE Arthur N. Votolato, United States Bankruptcy Judge

The Defendant, FCC National Bank ("FCC"), moves to dismiss the captioned Adversary Proceeding, arguing that Counts I and II, alleging violations of the discharge injunction, 11 U.S.C. § 524(a), should be dismissed on the ground that no private right of action was created in the enactment of that Section; and that Count III, which alleges a state law cause of action that FCC was unjustly enriched, is pre-empted by the Bankruptcy Code. Upon consideration, Counts I and II are DISMISSED for the reasons argued by FCC, and for reasons of our own, we dismiss Count III.

DISCUSSION

Section 524(a) provides:

(a) A discharge in a case under this title--

...

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, ... or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the

case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

11 U.S.C. § 524(a).

COUNTS I AND II

Upon consideration of the arguments and for the reasons argued by FCC, which are adopted and incorporated herein by reference,¹ see *In re Mayhew*, 223 B.R. 849, 857-58 (D.R.I. 1998), we conclude that a proceeding to remedy a violation of the discharge injunction pursuant to 11 U.S.C. § 524(a) must be one for contempt, as there is no express or implied right of action under that Section. Accordingly, FCC's Motion to Dismiss Counts I and II of the Complaint is GRANTED, and the Debtor has fifteen

¹ In *Mayhew*, Judge Lagueux, approving the practice of adopting and incorporating a party's argument in deciding a matter, stated:

this Court is aware of no First Circuit case condemning the practice of deciding motions by reference to the arguments of the prevailing party, much less reversing a case on that basis. ... Indeed, this practice is a common one which this Court itself follows from time to time. While, in a perfect world, every judicial ruling would be accompanied by a detailed opinion precisely explaining the basis of the ruling, the realities of crowded dockets and scarce resources require something short of perfection.

223 B.R. at 858 (footnote omitted).

In addition to Judge Lagueux's reference to the strain on judicial resources, we feel that if a party has expressed a point of view in a manner upon which we are unable to improve, the

(15) days within which to file an appropriate pleading consistent with this opinion.

COUNT III

adoption of that language within a decision is quite appropriate.

Although we disagree with FCC's argument on the preemption issue, Count III is nevertheless dismissed, on the ground that this Court lacks subject matter jurisdiction over the claim.² See *Community Bank v. Boone (In re Boone)*, 52 F.3d 958, 960 (11th Cir. 1995), (the bankruptcy court dismissed state law causes of action that were factually intertwined with the core bankruptcy claims, on the ground that the bankruptcy court lacked jurisdiction even under the expansive "related to" provisions for jurisdiction).

Here, since the asserted state law claims arose post-petition, these causes of action are not property of this estate, never will be, and any monetary recovery will not benefit creditors.

See also *Goldstein v. Marine Midland Bank (In re Goldstein)*, 201 B.R. 1, 5 (Bankr. D. Me. 1996).

Enter Judgment consistent with this decision.

Dated at Providence, Rhode Island, this 13th day of July, 1999.

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge

² This dismissal is without prejudice, of course, to the Debtor's right to file these claims in a court of competent jurisdiction.