SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: September 16, 2020

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

LINDA HAYS MCCOY, **CASE NO. 18-01569-NPO**

DEBTOR. **CHAPTER 7**

ORDER DENYING MOTION FOR SANCTIONS

This matter came before the Court on the Motion for Sanctions (the "Motion for Sanctions") (Bankr. Dkt. 49)[1] filed by the debtor, Linda Hays McCoy ("McCoy"), acting without the assistance of counsel (*pro se*), and the Mississippi Department of Revenue's Response in Opposition to Motion for Sanctions (the "Response") (Bankr. Dkt. 53) filed by the Mississippi Department of Revenue (the "MDOR") in the Current Case. In the Motion for Sanctions, McCoy seeks a return of funds collected by the MDOR by way of garnishments issued shortly after the Court's dismissal with prejudice of the Adversary as well as sanctions against the MDOR in the form of punitive damages.

[1] Citations to the record are as follows: citations to docket entries in the above-styled bankruptcy case (the "Current Case") are cited as "(Bankr. Dkt. #)"; citations to docket entries in adversary proceeding 19-00019-NPO (the "Adversary") are cited as "(Adv. Dkt. #)"; and citations to docket entries in bankruptcy case 07-02998-NPO (the "Prior Case") are cited as "(Prior Bankr. Dkt. #)".

Jurisdiction

This Court has jurisdiction over the subject matter of and the parties to the Current Case pursuant to 28 U.S.C. § 1334. This matter is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A) and (O). Notice of the Motion for Sanctions was proper under the circumstances.

Facts[2]

McCoy received a discharge of her debts under 11 U.S.C. § 727 in the Current Case on August 8, 2018. (Bankr. Dkt. 19). Thereafter, she commenced the Adversary by filing the Complaint to Determine Dischargeability of Debt (the "Complaint") (Adv. Dkt. 1) in which she sought a judgment declaring that her unpaid state income taxes had been discharged. The MDOR filed a Motion to Dismiss (the "Motion to Dismiss") (Adv. Dkt. 15) the Complaint on the ground that the dischargeability issue had been adjudicated fully on the merits in a prior adversary proceeding. (Adv. Dkt. 15). McCoy responded to the Motion to Dismiss and also filed several motions in the Adversary seeking sanctions against the MDOR for its alleged violations of the discharge injunction under 11 U.S.C. § 524 and the automatic stay under 11 U.S.C. § 362. (Adv. Dkt. 23, 26, 84). Procedurally, McCoy should have raised these contested matters in the Current Case rather than in the Adversary. Given her status as a *pro se* litigant, the Court did not require McCoy to refile the motions in the Current Case but resolved her motions in the Adversary.

After a hearing on January 17, 2020, the Court entered the Memorandum Opinion and Order on: (1) Motion to Dismiss; (2) Motion to Request to Amend Complaint; (3) Request for Motion to Amend Adversary Complaint; (4) Motion to Request Show Cause; (5) Motion to Show Cause (2015 Tax and Unlawful Collections); and (6) Request for Motion to Reopen Bankruptcy

[2] Pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable to the Adversary by Rule 7052 of the Federal Rules of Bankruptcy Procedure, the following constitutes the findings of fact and conclusions of law of the Court.

(the "Memorandum Opinion") (Adv. Dkt. 131; Bankr. Dkt. 25; Prior Bankr. Dkt. 52) and the Final Judgment on Complaint to Determine Dischargeability of Debt; Motion to Dismiss; Request to Amend Complaint; Request for Motion to Amend Adversary Complaint; Motion to Request Show Cause; Motion to Show Cause (2015 Tax and Unlawful Collection); and Request for Motion to Reopen Bankruptcy (together with the Memorandum Opinion, the "Final Judgment") (Adv. Dkt. 132; Bankr. Dkt. 26; Prior Bankr. Dkt. 53). In the Final Judgment, the Court granted the MDOR's Motion to Dismiss, dismissed the Adversary with prejudice, and resolved all contested matters in favor of the MDOR. The Final Judgment was entered in the Adversary, the Current Case, and the Prior Case on February 3, 2020.

Shortly after entry of the Final Judgment, the MDOR began enforcing its tax liens against McCoy's property and rights to property to collect on tax liabilities. (Bankr. Dkt. 53 at 2). On February 5, 2020, MDOR issued a levy to Trustmark Bank on McCoy's bank account and on February 7, 2020, served a warrant on McCoy's employer, the U.S. Department of Defense through the Defense Finance and Accounting Service. (*Id.*). Both Trustmark Bank and the Defense Finance and Accounting Service complied with the levies. MDOR received $329.48 from Trustmark Bank and $780.17 from the Defense Finance and Accounting Service for a total of $1,109.65. (*Id.*). In the Motion for Sanctions, McCoy invokes Rule 62(a) of the Federal Rules of Civil Procedure ("Rule 62(a)") in support of her request that this Court order the MDOR to disgorge these funds. McCoy alleges that the MDOR's collection actions violated the automatic stay under Rule 62 "which applies in adversary proceedings where proceedings to enforce a judgement are stayed for 14 days after its entry." (Bankr. Dkt. 49 at 1-2). McCoy argues that the MDOR should return the monies garnished, plus interest, and also "should incur punitive sanctions

as the Automatic Stay violation should be considered willful." (*Id*. at 3). In support of her claim for punitive damages, she cites 11 U.S.C. § 362(k).

Discussion

Rule 62(a) provides that "execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise." FED. R. CIV. P. 62(a). Rule 7062 of the Federal Rules of Bankruptcy Procedure ("Rule 7062") renders Rule 62 applicable in adversary proceedings "except that proceedings to enforce a judgment are stayed for 14 days after its entry." FED. R. BANKR. P. 7062. Thus, the execution or enforcement of a judgment is stayed automatically for fourteen (14) days in adversary proceedings.

A. Rule 62(a) applies only in adversary proceedings unless the Court directs otherwise.

McCoy filed the Motion for Sanctions in the Current Case. In the Final Judgment, the Court denied McCoy's motions against the MDOR for alleged violations of the discharge injunction and the automatic stay and for other actions. Unlike adversary proceedings, contested matters in bankruptcy cases are governed by Rule 9014 of the Federal Rules of Bankruptcy Procedure, which provides, in pertinent part:

> **(c) Application of Part VII Rules.** Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. . . . The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply.

FED. R. BANKR. P. 9014(c). Rule 7062, incorporating Rule 62, is not listed among the Part VII Rules that apply to contested matters. Thus, the automatic stay of the enforcement of a judgment pursuant to Rule 62 did not apply to the Court's denial of the motions filed by McCoy. For this reason alone, the Motion for Sanctions should be denied. Even absent the procedural error, the

Court finds that Rule 62 did not apply to the Final Judgment for a different reason, as discussed below.

B. Rule 62(a) does not apply to the dismissal of claims.

As the MDOR points out in the Response, Rule 62(a) is limited in scope. *In re Whatley*, 155 B.R. 775, 779 (Bankr. D. Colo. 1993), *aff'd*, 169 B.R. 698 (D. Colo. 1994), *aff'd*, 54 F.3d 788 (10th Cir. 1995). By its terms, Rule 62(a) only stays the "execution" or "enforcement" of a judgment. It does not purport to stay proceedings that do not involve the enforcement of a judgment. *Weston v. Cibula* (*In re Weston)*, 101 B.R. 202, 205 (Bankr. E.D. Cal. 1989), *aff'd*, 123 B.R. 466 (B.A.P. 9th Cir. 1991), *aff'd*, 967 F.2d 596 (9th Cir. 1992). Here, the Final Judgment dismissed the Complaint and all other claims alleged by McCoy. No affirmative relief was awarded to the MDOR. There was no need for the MDOR to commence execution or initiate other proceedings to "enforce" the dismissal of McCoy's claims. The dismissal was immediate and self-executing. *In re Whatley*, 155 B.R. at 780-81 (noting that judgments dismissing complaints "are inherently self-executing" because "[t]here is no need for the prevailing party to have to commence execution or initiate other proceedings to 'enforce' an order of dismissal"). The Court agrees with the MDOR that the collection activities following entry of the Final Judgment involved its execution and enforcement of tax liens, not its execution and enforcement of the Final Judgment. (Bankr. Dkt. 53 at 4).

"The concept of execution and enforcement of a judgment applies generally to the execution of a money judgment on behalf of a prevailing party or the enforcement of a decree when a complaint (plaintiff or counterclaim plaintiff) has prevailed on a claim for affirmative relief." *Trikona Advisers Ltd. v. Chugh*, No. 3:11cv2015 (SRU), 2014 WL 12767671, at *2 (D. Conn. Apr. 15, 2014). In the "context of an order dismissing a complaint," however, Rule 62(a)

"is superfluous . . . as such a judgment generally eliminates a cause of action rather than rendering one enforceable." *Weston*, 101 B.R. at 205. For example, the district court in *Trikona Advisers* denied the plaintiff's motion for emergency relief under Rule 62(a) from an order dismissing its claims on summary judgment. *Trikona Advisers*, 2014 WL 12767671, at *2. Rule 62(a) did not apply because the "plaintiff['s] claims were dismissed by way of summary judgment" and "there is no such judgment on which to execute or which to enforce." *Id*. As in *Trikona Advisers*, Rule 62(a) did not provide McCoy with a right to an automatic stay. The Final Judgment dismissed the Adversary and granted no affirmative relief on which MDOR could execute or enforce. The effectiveness of the Final Judgment was not stayed by Rule 62(a).

In the Response, the MDOR cites *Brunwasser v. Black*, 474 F. App'x 859 (3d Cir. 2012), where the Third Circuit Court of Appeals rejected a similar Rule 62(a) stay violation claim. There, the plaintiff initially filed a complaint against the Internal Revenue Service (the "IRS") to prevent it from collecting unpaid tax liabilities and against a bank to prevent it from surrendering funds in response to an IRS levy. The district court dismissed the first complaint for lack of subject matter jurisdiction. *Id*. at 860. Two days later, the bank complied with the levy by mailing a check to the IRS. The plaintiff then filed a second complaint against a bank employee and counsel for the bank, alleging that they had violated Rule 62(a) by executing the IRS levy before the Rule 62(a) automatic stay had expired. The Third Circuit held that Rule 62(a) did not apply because "when [the bank] complied with the IRS levy, it was not executing the judgment of . . . dismissal of . . . [the] complaint." *Id*. at 861. As in *Brunwasser*, Rule 62(a) did not stay MDOR's garnishment actions because MDOR was not executing the Final Judgment but enforcing its tax liens.

C. Section 362(k) does not apply to Rule 62 stay violations.

Because the Court has found that the MDOR's collection activities did not violate the Rule 62(a) stay, McCoy is not entitled to any damages. Regardless, McCoy's claim for punitive damages against the MDOR under 11 U.S.C. § 362(k) is misplaced. That statute provides that "an individual injured by any willful violation of a stay *provided by this section* shall recover actual damages . . . and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k) (emphasis added). Section 362(k), therefore, applies only to willful violations of the automatic stay imposed by 11 U.S.C. § 362(a). To the extent that McCoy alleges a violation of the automatic stay under 11 U.S.C. § 362(a), that stay terminated on August 8, 2018 when the Court entered the discharge order in the Current Case. (Bankr. Dkt. 19); 11 U.S.C. § 362(c)(2).

Conclusion

MDOR's enforcement of its tax liens did not violate the automatic stay under Rule 62(a) because Rule 62(a) did not apply to the Court's adjudication of the contested matters in the Current Case or to the dismissal of McCoy's claims in the Adversary. There was no stay prohibiting the MDOR from enforcing its tax liens. For that reason and because 11 U.S.C. § 362(k) does not apply to Rule 62 stay violations, McCoy is not entitled to any damages. Accordingly, the Court finds that the Response is well taken, and the Motion for Sanctions should be denied.

IT IS, THEREFORE, ORDERED that the Motion for Sanctions is hereby denied.

##END OF ORDER##